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THE

WORKS

OF

WILLIAM H. SEWARD

EDITED BY

GEORGE E. BAKER

"Nature and Laws would be in an ill case, if Slavery should find what to say for itself, and Liberty be mute, and if tyrants should find men to plead for them, and they that can waste and vanquish tyrants, should not be able to find advocates." MILTON.

IN FIVE VOLUMES

VOL. II.

NEW EDITION

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PREFACE TO VOLUME II.

The first volume of these Works contains a Biographical Memoir of Mr. Seward, his Speeches and Debates in the Senate of New York, his Speeches and Debates in the Senate of the United States, and his Forensic Arguments.

This volume embraces the writings of Mr. Seward while he occupied the executive chair of his native state.

Governor Seward was inaugurated on the first day of the year 1839, and remained in office four years, having been re-elected at the close of his first term — an honor more distinguished, it may be remarked, because, as the state advances, it is more rarely conferred. He entered upon the duties of his office under many peculiar circumstances, and there were apparently more exciting questions and important events crowded into those four years than into almost any similar period in the history of the state. Hence, the papers which emanated from his pen during that time, aside from their intrinsic merits, are believed to possess more than ordinary interest and value.

The volume commences with his "Notes on New York," which were prepared originally as the Introduction to "The Natural History of the State of New York," a work of great value, and an honor to the state and to Governor Seward's administration, as well as to that of his predecessor, Governor Marcy, under whose auspices it began. His State Papers, embracing his An-

nual and Special Messages to the Legislature, his Official Corre spondence, and his Pardon Papers, occupy the remaining pages

These papers need no comment to recommend them to the attention of the reader. In addition to their other merits, it may be safely said that they present the most rare and complete history of the state of New York ever published.

To some persons, the MESSAGES of Governor SEWARD, after the lapse of ten years, may appear the least attractive of any portion of these volumes; but the more attentive reader will discover in them the great ideas upon which are based the political philosophy that has governed the whole life of their author. As has been well remarked, they afford the light by which we may most easily and clearly read his public career in the service of the state of New York, and of the nation.

The publication of Governor SEWARD'S OFFICIAL CORRESPONDENCE, particularly those portions relating to the VIRGINIA, GEORGIA, and M'LEOD controversies, will be very generally welcomed; frequent demands for it having, for several years past, been heard from the press and from the public.

Perhaps no portion of his Works will be read with more interest by a large class of readers than the PARDON PAPERS. Their omission would have been seriously felt in estimating the character of their author and his administration.

With these few remarks, the present volume is respectfully submitted to the public.

The THIRD VOLUME will contain Mr. SEWARD'S Orations and Discourses, Occasional Speeches and Addresses, Executive Speeches, Political Writings, General Correspondence, Letters from Europe, and a continuation of his Speeches in the Senate of the United States.

THE EDITOR.

WILLIAMSBURGH, L. I., *March* 1, 1853.

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NOTES ON NEW YORK.

NOTES ON NEW YORK.*

New York is situated between 40° 30′ and 45° of north latitude, and between 5° 5′ of east and 2° 55′ of west longitude from the city of Washington. The state includes an area of 46,200 square miles, divided into fifty-nine counties, and subdivided into nine cities, eight hundred and thirty-five towns, and one hundred and forty-five incorporated villages; and contains 2,428,921 inhabitants;† of whom 2,378,890 are free white persons, and 50,031 are free colored persons.‡ The government is a representative republic, with a written constitution, which was framed by a convention in 1821, and approved by the people in a popular election in 1822. The few remaining descendants of the aborigines are neither enumerated, nor admitted to citizenship. Persons of African descent, possessing freeholds worth two hundred and fifty dollars, enjoy the right of suffrage. Aliens are excluded until they become naturalized according to the laws of Congress, after five years' residence in the United States. All male citizens who have attained the age of twenty-one years, and resided in the state one year, vote for all officers elected by the people, and may be chosen or appointed to places of trust or profit; but the governor must be a native citizen of the United States, and a freeholder, aged not less than thirty years, and must have been an inhabitant of this state five years previously to his election, unless absent on public business; and only freeholders can be elected senators. Elections are conducted by ballot. The constitution guaranties the franchises of citizenship to every member of the state, unless he be deprived of them by

* This work constitutes the Introduction to the Natural History of New York published by the legislature in 1842.—*Ed.*

† In 1850, the total population was 3,097,394.—*Ed.* ‡ U. S. census, 1840.

See Note *on page* 665.

the law of the land, or the judgment of his peers. Among those franchises are trial by jury, the writ of habeas corpus, liberty of speech and of the press, and free enjoyment of religious profession and worship. The government can make no discrimination or preference of religion, nor any provision for an ecclesiastical establishment, and the clergy are excluded from civil functions.* A militia, composed only of citizens who are enrolled, and required to appear under arms twice in each year, constitutes the only force within the state, relied on for public defence or maintenance of the civil authorities; but the constitution of the United States guaranties to the state security against invasion and domestic insurrection. There are four departments of the government: the legislative, executive, administrative, and judicial. The legislative power is absolute, except as restricted by the federal and state constitutions. A senate and an assembly constitute the legislature. The senate is composed of thirty-two members, who are elected by the people in eight equal senatorial districts, and remain in office four years. One senator is annually elected in each district. The assembly consists of one hundred and twenty-eight members, who are elected by the people in counties, each of which is represented in proportion to its population. The lieutenant-governor, elected by the people, presides, and has only a casting vote in the senate. A speaker, freely elected by the assembly, presides in that body. Bills originate in either house, and become laws when passed by both houses and approved by the governor, or when they receive the votes of two thirds of the members present, notwithstanding the executive veto. Laws to create or alter corporations require the assent of two thirds of all the members elected in each house.

The governor constitutes the executive department, is biennially elected by the people, is commander-in-chief of the militia and admiral of the navy, and is charged with the execution of the laws. He annually communicates to the legislature the condition of the state, and recommends such measures as he deems expedient. He is invested with power to pardon in all cases whatsoever, except treason, and may suspend the execution of persons convicted of that crime until the pleasure of the legislature shall be made known. In case of his death, absence, or

* By the constitution of 1846, this exclusion is abolished.—*Ed.*

incapacity, the executive functions devolve upon the lieutenant-governor. The administrative department is intrusted with the fiscal interests of the state, and is divided among a secretary of state, comptroller, treasurer, surveyor-general, attorney-general, commissary-general, commissioners of the canal fund, commissioners of the land-office, and canal commissioners; each of whom, by virtue of the constitution or laws, is appointed by the legislature without the interposition of the executive authority. There is a court for the trial of impeachments and the correction of errors, which is composed of the lieutenant-governor, senators, chancellor, and the justices of the supreme court. Articles of impeachment may be preferred by the assembly against the governor and all administrative and judicial officers, and the votes of two thirds of the members of the court for the trial of impeachments are necessary to a conviction. The court may remove the party convicted from office. The same court reviews the judgments and decrees of the supreme court and the court of chancery. The supreme court is a court of law, having jurisdiction in civil and criminal cases; and consists of three justices, each of whom holds his office until he attains the age of sixty years. Issues of fact are tried by jury before circuit judges who hold circuit courts, and by the county courts; and such issues in criminal cases are tried by jury in courts of oyer and terminer and general sessions in the several counties. The supreme court reviews the judgments of all inferior legal tribunals. County courts of common pleas and general sessions are held by local judges, who hold their offices five years, and review the proceedings in justices' courts. There are four justices of the peace in each town; they are elected by the people, and hold their offices four years, and have jurisdiction in civil cases, and in litigated cases may render judgments not exceeding one hundred dollars. Three justices constitute a court of special sessions for the trial of small offences. Equity is administered by a chancellor and by nine subordinate vice-chancellors, of whom six are also circuit judges. The chancellor and circuit judges respectively hold their offices until the age of sixty years. All judicial officers, except justices of the peace in towns, are nominated by the governor, and appointed by him with the advice and consent of the senate. He also appoints in like manner major-generals, inspectors of brigades, and officers of the general staff of the militia, except the

commissary-general. The constitution may be amended; and for that purpose a resolution must be passed by a majority of the legislature at one session, and at a succeeding session by the votes of two thirds of all the members elected, and be approved at the next general election by a majority of the people. The present constitution was established in the place of one which had been adopted in 1777.*

The bay of New York is supposed to have been visited by Verazzani, under the patronage of Francis I. of France, in 1584.† In 1609, Champlain, a mariner in the French service, explored the northern waters,‡ and Hendrick Hudson, under a commission from the States-General of the Netherlands, ascended the river whose name so justly commemorates the enterprise of that navigator.‖ The settlement of the southern portion of the state, under the name of New Netherlands, was commenced in the subsequent year. The colony submitted to the English in 1664,§ and was regained by the Netherlands in 1673,¶ but was relinquished to England by the treaty of Westminster in the succeeding year, and remained a province of the British empire until the thirteen united British colonies became an independent confederacy of states, in 1776. During the Dutch supremacy, the province was a mercantile possession of the Dutch East India Company. Under the English, it was by royal charter a manor belonging to the duke of York. In 1683, the discontent of the colonists induced the consent of the proprietor to the institution of a representative assembly.** After that period, restricted legislative powers were vested in the governor and council "and the people met in general assembly."

Although the States-General of the Netherlands were at the zenith of commercial power, and learning and the arts were cherished in that country, when the colony was planted, its inhabitants seem not to have been distinguished by intellectual developments;†† and although the conquest occurred at a time when the English people had attained even a higher supremacy in literature than in arms, yet that event seems not to have resulted in an improvement of the condition of society.‡‡

* The constitution was again revised in 1846, by a convention.—*Ed.*

† Bancroft. ‡ Id. ‖ Id. § Id. ¶ Id. ** Id.

†† Clinton, Introductory Discourse. ‡‡ Id.

Knowledge dawned upon the colony about the year 1754,* but was obscured during the civil commotions which a little more than twenty years afterward resulted in its political independence.

Columbia College was established by royal charter, under the name of King's College, in 1754, under the care of Doctor Samuel Johnson of Connecticut, as president. The governors of the college were the archbishop of Canterbury, the first lord-commissioner for trade and plantations, the lieutenant-governor of the province, and several other public officers, together with the rector of Trinity Church, the senior minister of the Reformed Protestant Dutch Church, the ministers of the German Lutheran Church, of the French Church, and of the Presbyterian Church, the president of the college, and twenty-four of the principal gentlemen of the city. The college was endowed with funds derived from lotteries, and voluntary contributions of private individuals in this country, and in England and France. Dr. Johnson was succeeded as president, in 1763, by the Reverend Miles Cooper, D. D. of Oxford. He, in 1767, acknowledged that the institution had recently received great emoluments from his majesty King George III., from liberal contributions by many of the nobility and gentry in the parent-country, from the society for the propagation of the gospel in foreign parts, and from several public-spirited gentlemen in America and elsewhere. He gave also this account of the success of the institution: "That the governors of the college had been enabled to extend its plan of education almost as diffusely as that of any college in Europe; there being taught therein divinity, national law, physic, logic, ethics, metaphysics, mathematics, natural philosophy, astronomy, geography, history, chronology, rhetoric; the Hebrew, Greek, Latin, and modern languages; the belles-lettres, and whatever else of literature may tend to accomplish the pupils both as scholars and gentlemen." At the commencement of the Revolution, the presidency devolved upon the Right Reverend Benjamin Moore, bishop of the protestant episcopal church; and the chair has since been filled by William Samuel Johnson, Doctor Wharton, William Harris, and William A. Duer.† The fair beginning of education in the colony was arrested by the revolutionary war; and the college was not re-organized until 1787, when, under the immediate superintendence of the newly-created regents of the

* Clinton, Introductory Discourse. † Historical sketch of Columbia College, 1826.

university, the institution assumed the name of Columbia College, and its charter, with some necessary alterations, was confirmed.*

Education was recognised as among the proper responsibilities of the government in 1784, by an act "erecting a university within this state." What appears to have been chiefly intended by this act, was to convert King's, now Columbia College, into a state university. The principal officers of the state were made, ex-officio, regents, and twenty-four other persons were appointed, and it was provided that each religious denomination in the state might appoint one of its clergy to be a regent. The regents were empowered to establish colleges and schools, which should be considered as parts of the university. This law was amended in November of the same year, and was revised in 1787. The provision authorizing the clergy to appoint a regent proved impracticable, and was repealed. The constitution of the university is at present substantially such as it was made by this last revision.

Among the many distinguished patrons of learning who have held seats in the board of regents, may be named George Clinton, John Jay, Morgan Lewis, Daniel D. Tompkins, De Witt Clinton, Joseph C. Yates, Martin Van Buren, Enos T. Throop, and William L. Marcy, former governors of the state; Pierre Van Cortlandt, Stephen Van Rensselaer, Jeremiah Van Rensselaer, John Broome, John Taylor, Erastus Root, James Tallmadge, Nathaniel Pitcher, Edward P. Livingston, and John Tracy, former lieutenant-governors; Egbert Benson, Philip Schuyler, Ezra L'Hommedieu, Lewis Morris, Matthew Clarkson, Benjamin Moore, Eilardus Westerlo, Baron de Steuben, Gulian Verplanck, Zephaniah Platt, James Watson, Abraham Van Vechten, Simeon De Witt, James Kent, Henry Rutgers, Ambrose Spencer, Peter Gansevoort, Solomon Southwick, Smith Thompson, John Woodworth, John Lansing, junior, Samuel Young, Nathan Williams, William A. Duer, Harmanus Bleecker, Samuel A. Talcott, Peter B. Porter, Robert Troup, Jesse Buel, Benjamin F. Butler, John Sudam, John P. Cushman, and Washington Irving. The present regents are the governor;† Luther Bradish, lieutenant-governor; Samuel Young, the secretary of state; Elisha Jenkins, James Thompson, Peter Wendell, John Greig, Gulian C. Verplanck, Gerrit Y. Lansing, John K. Paige, John A. Dix, William Campbell, Erastus Corning, Prosper M. Wetmore, James M'Kown,

* Laws of New York, 1784.

† William H. Seward.

John L. Graham, Amasa J. Parker, John M'Lean, Joseph Russell, John C. Spencer, Gideon Hawley, and David Buel.

Union College, at Schenectady, was established by the regents in 1795, after striking out a provision in the plan submitted, which declared that a majority of the trustees of the college should not, at any time, be composed of persons of the same religious sect or denomination.* The charter contained the singular provision that the clear annual value of the real property of the institution should not exceed thirteen thousand three hundred and thirty-three dollars; and declared that the trustees should not exclude any person on account of his particular tenets or religion, from admission into the college. In 1797, the trustees of the college, as appears from the report of the condition of the institution, gave instruction concerning the constitution of the United States, and the several state constitutions, and proposed to substitute tuition in the French language for the Greek. In 1828, the trustees of the college reported that they had prescribed two distinct courses, the one embracing such classical studies as were usually pursued; and the other called the scientific course, substituting modern in the place of ancient languages, and including instruction in mathematics, anatomy, physiology, law, &c. Similar arrangements were about the same time made in the other collegiate institutions, but the classical course has nevertheless continued to be the chief form of instruction in these seminaries. The first president of Union College was the Reverend John B. Smith, D.D. He was succeeded, in 1799, by the Reverend Jonathan Edwards, D. D., who died in 1801; when the Reverend Jonathan Maxcy, D.D., was appointed, who retained the place until 1804. In that year the Reverend Eliphalet Nott, L L. D., succeeded to that office, which he yet retains. Among the patrons of this institution were Robert Yates, Abraham Ten-Broeck, John Glenn, Stephen Van Rensselaer, Henry Walton, Joseph C. Yates, John Fry, Jonas Platt, Stephen N. Bayard, Theodore Romeyn, John V. Henry, Philip Van Rensselaer, Guert Van Schoonhoven, James Emott, James Duane, Samuel Blatchford, Jonas Coe, William James, and Henry Yates.

Hamilton College, at Clinton, was founded by the regents of the university in 1812, under the care of the Reverend Asahel

* Proceedings of the Regents of the University.

Backus, D. D., as president. His successors have been the Reverend Henry Davis, D. D., 1817; the Reverend Sereno E. Dwight, D. D., 1833; the Reverend Joseph Penny, D. D., 1835; and the Reverend Simeon A. North, A. M., who assumed that office in 1839. Among the names of the distinguished patrons of the college are those of Simon Newton Dexter, and William H. Maynard.

Geneva College was incorporated in 1825. Its first president was the Reverend Jasper Adams, D. D. He was succeeded by the Reverend Richard Sharp Mason, in 1830; upon whose resignation, in 1835, the Reverend Benjamin Hale, D. D., was appointed to that office. Among the prominent patrons of the institution have been James Reese, Herman H. Bogart, William L. Dezeng, John C. Spencer, Abraham Dox, Francis Dwight, Bowen Whiting, David Hudson, Thomas D. Burrill, James Carter, Elijah Miller, Jesse Clarke, John C. Rudd, George Hosmer, David E. Evans, Joseph Fellows, Jonathan Childs, Abraham M. Schermerhorn, Samuel Clark, the Right Reverend B. T. Onderdonk, and the Right Reverend William H. De Lancey.

The University of the city of New York was established in 1830, under the care of the Reverend J. M. Mathews, D. D., as its chancellor. The success and usefulness of the institution were for several years impaired by internal controversies which were not terminated until 1839, and by pecuniary embarrassments. Doctor Mathews having resigned, Theodore Frelingnuysen, LL. D., was appointed his successor, and he yet remains chancellor of the institution.

All these institutions have received liberal endowments from the state, and they educate annually about six hundred and fifty pupils. The colleges give instruction in moral, intellectual, and political philosophy; in the Hebrew, Greek, Latin, and modern languages and literature; in natural and experimental philosophy and chemistry; in mathematics, analytical mechanics, and physical astronomy; in law, civil polity, and history, and political economy.*

* Complaints are often made that the standard of university education has been lowered since its introduction among us; yet it can not be admitted as in any sense true, that the amount of knowledge communicated is less now than at any former period. On the contrary, the assiduity of both instructors and pupils, as well as the facility of instruction, have been continually increased. The change which has taken place consists in a diminution of classical learning, and of mental science and logic, and, perhaps, of moral and political science, and a substitution of more extensive in-

Clinton Academy in Suffolk county, and Erasmus Hall Academy in Kings' county, incorporated in 1787, were the first academical institutions established by the regents of the university. Farmer's Hall Academy in Orange county, and North Salem Academy in Westchester, were established in 1790. Montgomery Academy, then in Ulster but now in Orange county, was incorporated in 1791. Dutchess Academy at Poughkeepsie, and Union Hall in Queens county, received their charters in 1792. In 1820, the number of academies subject to the visitation of the regents had risen to 30; in 1830, to 55; in 1841, to 127; and the number at this time is 131. In 1820, the number of pupils in all the academic institutions was 2,218; in 1830, 3,735; in 1840, 10,881; and the present number is 11,306.* The income of the public literature fund, distributed to the several academies in 1820, was two thousand five hundred dollars, being in the proportion of three dollars and ninety-three cents to each pupil pursuing classical studies; in 1830, it was ten thousand dollars, or five dollars to every such pupil; and the amount now annually distributed is forty thousand dollars, being about three dollars and seventy-eight cents for every such pupil.†

No especal public patronage was bestowed upon female education until 1821, when the legislature incorporated the Albany Female Academy, and conferred upon it a donation of one thousand dollars. A law of 1827, increasing the literature fund and extending to scholars in the higher branches of English education the advantages before enjoyed exclusively by those pursuing classical studies, resulted in admitting to a participation in the benefits of that fund, institutions devoted either entirely or in

struction in physical science and practical mathematics. This change has resulted from the operation of our social system. Collegiate education, instead of being reserved for the few, who, favored by fortune, might desire to prosecute recondite and classical studies during and after their course, and to enter at leisure upon the duties of active life, or refrain from them altogether, is now attainable by persons in almost every class, and is sought not so much for the sake of knowledge itself, as because it is among the means of preparation to enter the professional pursuits. Perhaps, therefore, our system of collegiate education produces proportionably a smaller number of finished scholars, while it secures to the country a larger body of useful citizens. Nevertheless, beneficent as the general flow of knowledge is, those who have the care of its fountains deserve well of the country for every effort to preserve them full of pure learning. The labors of the Rev. Dr. Hale, president of Geneva College, and his associates; of the Rev. Dr Alonzo Potter, of Union College, and generally of the faculty and trustees of Columbia College, in this respect, merit especial commendation.

* Minutes of the Regents of the University.

† Notes concerning colleges and academies were received from Gideon Hawley, LL. D.

part to the education of females. The number of female pupils who, at the time that law was passed, enjoyed the benefits of academic instruction under the sanction of the regents, was one hundred and fifteen; the number at the present time is fifteen hundred and seventy. Institutions exclusively devoted to female education, and subject to the visitation of the regents, have been founded in Albany, Canandaigua, Poughkeepsie, Troy, Schenectady, Utica, Batavia, Rochester, New York, Auburn, Le Roy, Fulton, and Albion. In these institutions, instruction is given in arithmetic, algebra, botany, biblical antiquities, calisthenics, chemistry, composition, conic sections, criticism, drawing, embroidery, ecclesiastical history, the French language, geography, geology, history, logic, music, mechanics, mineralogy, natural history, natural philosophy, moral and intellectual philosophy, painting, rhetoric, and technology.

For the impulse which the public mind has received in favor of female education, it is only just to acknowledge obligations to Mrs. Emma Willard of Troy, the founder of the first successful institution on a scale commensurate with the importance of the object; and to James Kent, John N. Campbell, and their associates, the founders and patrons of a similar institution at the capital.* It is also due to the conductors and patrons of the female academies, to acknowledge, that with far less pretension and more limited public aid than our colleges, they are successful in maintaining a high standard of pure education; and that their pupils exhibit proficiency and acquirements comparing favorably with the best results of collegiate education. The female academies have very careful public examinations and annual celebrations, in which essays written by pupils are read by persons appointed for that purpose, and medals and other testimonials of merit are awarded. The benign influences of these institutions are already observable in the more frequent employment of women as instructors of youth, in the increasing respect which the sex receives, and in the greater refinement of society.

The tendency, however, of a popular government, is to favor rather the diffusion of general knowledge, and that which is immediately useful, than the advancement of pure science, and the cultivation of liberal and ornamental arts.

* Notes concerning female education were furnished by A. Crittendon, principal of the Albany Female Academy.

In a community where each individual shares the responsibilities of government, there is an obvious necessity for universal education. This principle may be discerned in the earliest legislation at the close of the revolution. In 1789, two lots were set apart in each township of public lands, to constitute a local fund for the support of religious instruction and popular education. The regents of the university, in 1793, submitted to the legislature the importance of "instituting schools for the purpose of instructing children in the lower branches of education." The recommendation was renewed in 1795, with the sanction of George Clinton, then governor. The legislature in the same year appropriated twenty thousand pounds ($50,000) annually for five years, out of the public revenue, to encourage and maintain, in the several cities and towns, schools, in which the children of the inhabitants residing in the state should "be instructed in the English language, or be taught English grammar, arithmetic, mathematics, and such other branches of knowledge as are most useful and necessary to complete a good English education." The boards of supervisors were required to raise by tax in each town, a sum equal to one half of its proportion of the moneys appropriated by the state; and commissioners and trustees were directed to be appointed, and required to make annual reports to the secretary of state.

The returns made in 1798, showed that 1,352 schools had been established, and 59,660 children had been instructed therein in sixteen of the twenty-three counties into which the state was then divided. Mr. Comstock, a representative from Saratoga in the assembly of 1800, made an unsuccessful motion that the then expiring law of 1795 should be continued. The law therefore was suffered to expire; and notwithstanding the earnest and repeated representations of Gov. George Clinton, the legislature omitted to adopt any measure for the re-establishment of common schools until 1805, when a law was passed, declaring that the net proceeds of five hundred thousand acres of public lands should be devoted to the creation of a permanent fund for the support of common schools. The act directed that the lands should be sold, and the moneys derived therefrom loaned and suffered to accumulate, until the interest arising thereon should amount to fifty thousand dollars annually; after which period, the annual interest should be distributed for the support of common schools.

The measure received important aid from the recommendation of Morgan Lewis, who then filled the executive chair. The fund thus established produced an income, in 1810, of twenty-six thousand dollars; and Daniel D. Tompkins, then governor, in two successive annual speeches, urged the importance of an immediate organization of the common schools. A law was passed in 1811, authorizing the governor to appoint commissioners to devise a system for that purpose. Jedediah Peck, John Murray, junior, Samuel Russell, Roger Skinner, and Robert Macomb, were appointed such commissioners; and in 1812, they submitted to the legislature a report, which was adopted, and is the basis of the existing system of common schools.

The fund was increased in 1819, by various appropriations, which raised its productive capital to about $1,200,000. The new constitution, adopted in 1821, not only declared the school fund to be inviolable, and guarantied its perpetual application, but added to it all the unappropriated public lands. Forty thousand dollars were added to the fund in 1824; and in 1827, other appropriations were made to the amount of about $180,000.* In 1838, an annual appropriation of $110,000 was added to the income of the fund, and the principal was also considerably augmented. The invested and productive capital of that fund is now $2,036,625. The sum annually distributed from the state treasury in support of common schools, is $261,000. Adding to the principal the unsold lands, valued at $200,000, and principal moneys sufficient to yield an interest equal to the amount annually appropriated from the treasury, beyond the income of the invested and productive capital, the entire capital would be $5,820,000. The whole capital permanently invested for the support of education in colleges, academies, and common schools, including all endowments, contributions from the treasury, and moneys derived from taxation in the school districts, is $10,500,000.†

The chief features of the common school system, are the annual election of commissioners of common schools by the people in the several towns; the division of towns by the school commissioners, into school districts; the election of trustees in such school districts by the inhabitants thereof; the erection and

* Report of A. C. Flagg, superintendent of common schools.
† Governor's message, 1842.

maintenance of a school house in each district, with funds derived from the tax levied upon the inhabitants by the trustees, in pursuance of a resolution passed at an annual meeting of the inhabitants; the employment of teachers whose qualifications are approved by inspectors elected by the people; a contribution by means of taxation in each school district, of a sum equal to that apportioned to the district out of the public funds; the supplying of any deficiency in the funds necessary for the support of the schools, by the charging of tuition fees upon such parents and guardians as are of sufficient ability; the exemption of the poor from all charges for tuition fees; the maintenance of a school in each district, not less than four months in each year; the visitation and examination of schools by the inspectors, and by a deputy superintendent of common schools for the county the latter officer being appointed by the supervisors; and a supervision and care of the entire school system of the state, by the secretary of state, who is superintendent of common schools, and to whom annual reports of the condition, progress, and statistics of each school district are made by the trustees thereof; the maintenance of schools wherever necessary for the education of children of African descent; the maintenance of normal schools in the most flourishing academical institutions, for the instruction of teachers of both sexes; the publication and distribution to each school of a periodical journal, exclusively devoted to the cause of education and not of a sectarian or party character, and in which are published the laws of the state, the regulations established by the superintendent, and his decisions upon questions affecting the organization, administration, and government of the schools; and a comprehensive annual report to the legislature by the superintendent, of the condition of the schools throughout the state.*

The whole number of school districts in the state is 10,886, in which schools are maintained during an average period of eight months in each year. The number of children instructed is 603,583. The whole amount of money expended for the payment of wages of teachers is $1,043,000;† of which $560,000 are public money, and the remainder is contributed by individuals.‡

* Laws of New York, 1841.

† In 1850, the whole number of children instructed has increased to 800,000; and the whole amount of money expended for schools to $1,322,696.24.—*Ed.*

‡ Annual report of S. S. Randall, deputy superintendent of common schools, 1842.

It is apparent that the efficiency of the public school system must depend in a great measure upon the ability, zeal, and efficiency of the superintendent of common schools. That office was filled in 1813, by the appointment of Gideon Hawley, who gave place in 1821 to Welcome Esleeck. Mr. Esleeck held the office only a few months; it then devolved upon John Van Ness Yates, who retired in 1826, when Azariah C. Flagg succeeded to that trust, and retained the same until 1833. Mr. Flagg was succeeded by John A. Dix, who gave place, in 1839, to John C. Spencer. Mr. Spencer retired in 1842, and the place is now filled by Samuel Young. To Gideon Hawley is justly ascribed the merit of organizing the system, and bringing it into successful operation; to John Van Ness Yates, that of an assiduous and enlightened administration; to John A. Dix, that of codifying and interpreting upon fixed and enlightened principles the vast body of school laws; and to Azariah C. Flagg, and John C. Spencer, high praise is awarded for earnest and well-directed efforts to remove obstacles which prevented the system from becoming such as its founders originally proposed it should be: a uniform plan of universal education, as well in the cities as in the country. The latter gentleman, during his occupancy of the office, induced the legislature to revise the entire system, and increase its efficiency and usefulness by important amendments and improvements, and especially by those which secure more effectual visitation of the common schools by the appointment of local superintendents. The enlightened efforts of George Clinton, of Lewis and of Tompkins, have been already acknowledged. Nor was less zeal exhibited by De Witt Clinton and William L. Marcy, successors in the executive office. To William A. Duer the system is much indebted, for his successful efforts in inducing the legislature to make the support of schools by the people, with public aid, compulsory.

The maintenance of school district libraries may now be regarded as a cardinal feature of the system of primary education; an improvement which, if not suggested, was brought into public favor through the patriotic efforts of James Wadsworth of Geneseo, aided and sustained by William L. Marcy, under whose administration this important project was carried into successful operation. Bountiful and widely-extended as the provision for this system seems to be, the people of the state of New York are

as yet scarcely enjoying its first fruits. When it is remembered that knowledge exerts a self-expanding and self-regenerating power, and that the relations not only among the several American communities, but between all regions of the earth, are becoming more and more intimate, it is perhaps not presumptuous to suppose that the ripened fruits of the plan are to be developed in the intellectual, moral, and social improvement of the whole human family.*

The first notice of a library which we meet, bears date a hundred and fourteen years ago; when an association in England, called the "Society for the Propagation of the Gospel," transmitted to Richard Montgomerie, governor of the province, a thousand volumes, a gift from Dr. Millington, rector of Newington.† The society informed the governor, that the books were intended as a library for the use of the clergy and gentlemen of New York, Connecticut, New Jersey, and Pennsylvania; and requested that the assembly would provide a depository. The subject was referred to the corporation of the city of New York, who assigned an apartment in the city-hall. In 1754, the sum of six hundred pounds was subscribed by an association in the city of New York, and expended in the purchase of seven hundred volumes of "new and well-chosen books." The society was incorporated in that year; and it was expected that its collection, containing the two libraries which have been mentioned, would, by further contributions, "become vastly rich and voluminous." The society still exists, and its library, now amounting to forty thousand volumes, proves that the expectations of its founders have been fully realized. Notwithstanding, however, the advantages thus enjoyed by the citizens of the embryo metropolis, the historian, in 1762, gave this unfavorable account of the intellectual condition of the colonists: "Their schools are in the lowest order; the instructors want instruction; and through a long shameful neglect of all the arts and sciences, the common speech is extremely corrupt, and the evidences of a bad taste, both as to thought and language, are visible in their proceedings public and private. There is nothing the ladies so generally neglect as reading, and indeed all the arts for the improvement

* Notes concerning common schools were received from Gideon Hawley, L.L. D., and Samuel S. Randall, Esq., the deputy-general superintendent.

† American Gazetteer, 1762.

of the mind—a neglect in which the men have set the example."*

The legislature, in 1796, passed an act by which, after reciting that a disposition for improvement in useful knowledge, and for procuring and erecting social and public libraries, had manifested itself in various parts of the state, and that it was of the utmost importance to the public that the sources of information should be multiplied, and institutions for that purpose encouraged and promoted, provision was made for the incorporation of public library associations. Valuable libraries were established under this law in many of the principal towns; and they were exempted by a subsequent act, and still remain free from taxation.

A state library, deposited in the capitol, was commenced in 1818. The law department therein contains 4,273 volumes; and the scientific, literary, and miscellaneous division contains 4,218 volumes. The collection has been enriched by very munificent donations from the government of Great Britain; and the selection, which has hitherto been made with great care, is now continually increased by means of annual legislative appropriations of about three thousand dollars.

But the most important public measure in relation to libraries was the act before referred to, by which the sum of $55,000 of public money was annually, for five years, devoted to the establishment of a school library in each of the eleven thousand school districts in the state. Each district was, moreover, obliged to raise a sum equal to that apportioned to it from the treasury; so that the amount devoted to the establishment of these collections, which, as they are distributed so as to bring a library within the reach of every family, may be called domestic libraries, is $550,000. The Messrs. Harper, publishers in New York, acting in harmony with the intentions of the legislature, have already issued from their press two hundred volumes, constituting a series of popular works, chiefly by native authors, on subjects in the various departments of science and literature, and especially designed for these libraries. Mr. Wadsworth, already honorably mentioned, continues to favor the enterprise by an annual contribution to the writers of such works as are

* American Gazetteer, 1762.

approved by the superintendent of common schools. By a law of 1841, each academy receives from the treasury a sum of about two hundred and fifty dollars; which, together with an equal amount contributed by the founders and patrons of the institutions, is applied to the purchase of text-books, globes, maps, and philosophical apparatus.

During the Dutch government, no press was established; and so late as 1686, Governor Dongan was instructed to allow no such establishment in the colony.*

The great English revolution of 1688, and the accession of William and Mary, were hailed with enthusiasm in the colonies, and awakened in New England and New York an earnest desire to repossess the rights and franchises which had been wrested by the Stuarts, or tamely yielded to their rapacity. The popular mind did not then suspect that the despotism of absolute monarchy had only given place to the omnipotence of parliament. Although a press had been established for scientific and literary purposes at Cambridge, in Massachusetts, about the middle of the seventeenth century, printing was not commenced in Boston, Philadelphia, or New York, until near the close of that century; nor was any newspaper printed in the American colonies before the year 1700. Dr. Cadwallader Colden, often mentioned in this memoir, in a letter written in 1743 to Dr. Franklin, minutely explained an improvement he had conceived in the art of printing, which was identical with the stereotype process introduced into France nearly sixty years afterward, by Mr. Herhan, under letters patent from Napoleon. Dr. Colden's letter was published in Hosack and Francis' American Medical and Philosophical Register, in 1810. But it is only just to say, that subsequent researches have resulted in showing that a bible was printed by Gillett, with stereotype plates, in Strasburgh, twenty years at least before the improvement suggested itself to Dr. Colden.†

The first newspaper which appeared in the colony of New York was the "New York Gazette," by William Bradford, in 1725. It was the fifth then in existence in the American colonies, three having already been established in Massachusetts, and one in Philadelphia. Bradford was said to have fled from Philadel-

* Clinton's Introductory Discourse. † Hinton.

phia to New York. He had given offence by publishing a paper written by George Keith. Keith had been condemned by the city meeting of Friends for a doctrine which he maintained, and he appealed to the general meeting of that society, and published an address concerning the controversy. The address was denounced as seditious, and Bradford was arrested and imprisoned for printing it. The trial of Bradford is a curious and instructive illustration of the spirit of the age, and of the imperfect notions of the liberty of the press which prevailed at that day. Keith was adjudged guilty, in both the ecclesiastical and civil courts without a hearing; and one of the judges having declared that the court could judge of the matter of fact without testimony, directed the common crier to "proclaim, in the market-place, the accused to be a seditious person, an enemy to the king and queen's government." Bradford and Macomb, an associate, were charged with circulating the offensive pamphlet, and demanded a speedy trial as a right secured by magna charta. Being members of the society of Friends, they appeared in court covered. Justice Cooke inquired: "What bold, impudent, and confident men are these, to stand thus confidently before the court?" Bradford replied: "We are here only to desire that which is the right of every free-born English subject, which is speedy justice; and it is strange that that should be accounted impudence." Justice Cooke answered: "If thou hadst been in England, thou wouldst have had thy back lashed before now." The prisoners continued to press for a trial. Justice Cooke replied: "A trial thou shalt have, and that to your cost, it may be." When the trial came on, Bradford asked that he might have a copy of the presentment, and be informed under what law he was prosecuted; but these requests were denied. During the trial, "the grand jury sat by the prisoners overawing and threatening them, when they spoke boldly in their own defence, and one of the grand jurors wrote down such words as they disliked, signifying that they would present them. Justice Cooke bade the grand jurors take notice of such and such words." When the prisoner's counsel began to say something in regard to the matter, the court directed an officer to take him away. The attorney for the prosecution concluded by saying: "It is evident William Bradford printed the seditious paper, he being the printer in this place, and the frame on which it was printed

was found in his house." Bradford then said: "I desire the jury and all present to take notice, that there ought to be two evidences to prove the matter of fact, but not one evidence had been brought in this case." Justice Jennings answered: "The frame on which it was printed is evidence enough." Bradford replied: "But where is the frame? There has no frame been produced here; and if there had, it is no evidence unless you saw me print on it." To which Justice Jennings answered: The jury shall have the frame with them; it can not well be brought here; and besides, the season is cold, and we are not to sit here to endanger our health." The jury, however, after remaining out sixty hours, resisted all the urgency of the court, disagreed, and were discharged. Soon after this trial, Bradford, having in some manner obtained a release, appeared in New York. The sedition of the publication consisted in the inquiry, whether the Friends, in sending out armed commissions against piracy, did not violate their religious profession.

Thus the foundation of the press in New York may be said to have been laid in the maintenance or assertion of its primary rights and liberties. On arriving at New York, Bradford became printer to the government, which station he held for many years; and such is the infirmity of our nature, that, at a later period, when the only rival press in the colony had assumed an attitude opposed to the local government, and was sought to be crushed by prosecution and imprisonment, he was found on the side of power and privilege, and against the enfranchisements of speech for which he had contended forty years before. Bradford established the first paper-mill in New Jersey, and the first perhaps in America. He was about seventy years old when he began the publication of the Gazette, and continued in the active duties of the paper for sixteen or seventeen years. The Gazette was continued after 1742, with the additional title of the "Weekly Post-Boy" until 1773.

John Peter Zenger established in 1733 the "New York Weekly Journal," the second newspaper in the colony. It opposed the administration of Governor Cosby, and supported the interest of Rip Van Dam, who had previously conducted the administration. Zenger maintained an effective battery. "The ballads, serious charges, and above all, the home truths in his democratic journal, irritated Cosby and his council to madness." Zenger

was confined several months by order of the governor and council, for printing and publishing seditious libels; treated with unwarrantable severity; deprived of pen, ink, and paper, and denied the visits of his friends. The popular feeling, however, was strongly against these proceedings. The assembly, notwithstanding the application of the governor, refused to concur with him and his council. The mayor and the magistrates also refused to obey the mandate of the governor and council, and to attend the burning of the libellous papers "by the common hangman and whipper, near the pillory." The grand jury manifested equal contumacy, and ignored the presentment against Zenger. The attorney-general was then directed to file *an information*. The judges refused to hear and allow the exceptions taken by Zenger's counsel, and excluded them from the bar; but he was ably defended by other counsel, and especially by Andrew Hamilton, then a barrister of Philadelphia. Zenger pleaded not guilty. His counsel admitted the printing and publishing of the papers, and offered to give their truth in evidence. The counsel for the prosecution then said, "The jury *must* find a verdict for the king," and gave the usual definition of a libel; asserting that, "whether the person defamed was a private man or magistrate, whether living or dead, whether the libel was true or false, or whether the party against whom it was made was of good or evil fame, it was nevertheless a libel." He then quoted from the Acts of the Apostles, and from one of the epistles of Peter, to show that it was a very great offence to speak evil of dignities;" and insisted upon the criminality by the "laws of God and man, of reviling those in authority, and consequently that Mr. Zenger had offended in a most notorious and gross manner, in scandalizing his excellency our governor, who, said the counsel, is the king's immediate representative and supreme magistrate of this province." Mr. Hamilton remarked in his reply, that we are charged with printing and publishing a certain *false*, malicious, seditious, and scandalous libel. The word *false* must have some meaning, or else how came it there; and he put the case, whether if the information had been for printing a certain *true* libel, would that be the same thing? "And to show the court that I am in good earnest," said he, "I will agree, that if he can prove the facts charged upon us to be *false*, I will own them to be scandalous, seditious, and a libel." He then further

offered, that to save the prosecution the trouble of proving the papers to be false, the defendant would prove them to be true. To this, Chief-Justice De Lancey objected: "You can not be admitted to give the truth of a libel in evidence; the law is clear that you can not justify a libel." Mr. Hamilton maintained, that leaving the court to determine whether the words were libellous or not, rendered juries useless or worse. "It was true," he said, "in times past, it was a crime to speak truth, and in that terrible court of star-chamber many worthy and brave men suffered for so doing; and yet even in that court, and in those bad times, a great and good man durst say, what I hope will not be taken amiss in me to say in this place, to wit: 'The practice of information for libels is a sword in the hands of a wicked king and an arrant coward, to cut down and destroy the innocent. The one can not, because of his high station, and the other dare not, because of his want of courage, defend himself in another manner.'"* The jury, after a short consultation, returned a verdict of not guilty, to the great mortification of the court and of Zenger's persecutors, but with great satisfaction to the people. The common council of the city conferred upon Mr. Hamilton the public thanks and the freedom of the corporation, for that signal service which he cheerfully undertook under great indisposition of body, and generously performed, refusing either fee or reward.†

Such was the struggle which the press had to maintain only one hundred years ago, and only forty years before the revolution gave to its freedom the sanction of government and the impress of authority. Gouverneur Morris, in speaking of these occurrences to Dr. Francis, remarked "that the trial of Zenger was the germ of American freedom, the morning-star of that liberty which subsequently revolutionized America." Zenger died in 1746. His newspaper was conducted by his widow, and afterward by his son, until 1752, when it was discontinued. The "New York Gazette and Weekly Post-Boy" was revived by James Parker in 1742, and was continued by successive proprietors until 1773. It was ably conducted, and had an extensive circulation; and though free, never transcended the bounds of

* Nearly seventy years afterward, another Hamilton maintained this great and now undeniable principle with eloquence and power, which may be said to have conquered at last this great concession to the liberty of the press.

† Dunlap's History of New York.

decorum as they were defined at that day. The paper combated the stamp-act, and with several contemporaries throughout the colonies, appeared in mourning on the 21st of October, 1765, on account of the passage of that law. The "New York Evening Post" appeared in 1746, but was soon discontinued. The "New York Mercury" was commenced by Hugh Gaine, and was discontinued at the close of the revolutionary war, after an existence of thirty-one years under the patronage of its founder. William Wyman, in 1759, established the "New York Gazette," which, after a fitful existence, expired in 1767. The "American Chronicle was commenced by S. Farley, in 1761, and discontinued the next year; and the "New York Packet," begun in 1763, had only a brief existence. In 1766, John Holt issued "The New York Journal and General Advertiser;" and in 1768, "The New York Chronicle" was commenced by Alexander and James Robinson, and continued until 1772, when the printers removed to Albany, and established there "The Albany Post-Boy," which continued until 1776. James Rivington, in 1773, commenced his newspaper career with a large and handsome sheet bearing the comprehensive title of "Rivington's New York Gazetteer, or the Connecticut, New Jersey, Hudson's River, and Quebec Weekly Advertiser;" and in January, 1776, the publication of the "New York Packet and American Advertiser" was begun by Samuel Loudon.

At the advent of the Revolution, therefore, there were only four newspapers in existence in the colony, to wit, Gaine's Mercury, Holt's Journal and Advertiser, Rivington's Gazetteer, and Loudon's Packet; and as these reflected the spirit of that epoch, and were characteristic of the phases of the mighty struggle, a few facts in relation to them may not be devoid of interest. Gaine, who was a native of Ireland, continued to print and sell books in Hanover square until his death in 1807, a period of nearly sixty years. Exact, punctual, and industrious, he acquired a large estate, and transmitted a reputation for personal honesty, thrift, and tact, not often disturbed by excessive aspirations of patriotism. Approaching the Revolution, he was ostensibly neutral; but with a desire to keep the strongest side, he alternately printed for the people and for the loyal authorities, as each seemed to preponderate. Although he removed with his press to New Jersey on the approach of the British army, he re-

turned when they had gained possession of the city; and emboldened by their successes, pursued the natural impulses of his mind, and gave to the royal cause the best efforts of his pen and press. His request to be allowed to remain in the city after its evacuation by the British army was granted; but his traits of character were happily hit off in a poem which appeared on the 1st of January, 1783, professing to be the humble petition of Gaine to remain in the city, in which his early profession and attachment to the cause of the country, his subsequent adhesion to the royal cause, and his final appeal, were humorously and satirically described. It concluded: —

> "As matters have gone, it was plainly a blunder,
> But *then* I expected the whigs must knock under,
> And I always adhere to the sword that is longest,
> And stick to the party that's like to be strongest."

The Mercury, of course, did not survive the Revolution.

Rivington was an English bookseller, a man of the world, and of good talents, who established his business in New York in 1761, and in 1773 commenced the publication of the Gazette on a large medium sheet folio. The paper surpassed its contemporaries in enterprise, and in its original essays and its various intelligence; and soon came to be extensively patronized in all the principal towns. But when the king's arms were substituted for the early vignette, and the descriptive words in the title, "ever open and uninfluenced," were erased, and the paper gave unequivocal demonstrations of hostility to the popular cause, a body of armed men from Connecticut, in November, 1775, entered the city on horseback, beset the printer's habitation, destroyed his press, and threw his types into heaps, or converted them into bullets. Two years afterward, he returned from England with new materials, and renewed his paper, which now appeared twice a week on a sheet of royal size, surmounted with the royal arms, and entitled "The Royal Gazette, published by James Rivington, printer to the king's most excellent majesty." This paper was conducted with exceeding virulence against the "rebels." It was the leading royal press in the colonies, issued from the chief seat of British power, and attained precedence as the acknowledged official organ, and necessarily became very obnoxious to the prevailing party. At length, foreseeing the result, Rivington sought to conciliate the whigs, and succeeded

so far as to insure the toleration of his residence in the city; but his paper, although it discarded the emblems and appendages of royalty, expired in 1783. The wits and satirists of the revolutionary press conferred an unenviable immortality upon its editor.

But there are more grateful aspects in the history of the republican press devoted to the cause of the country. The "New York Journal and Advertiser," published by Holt & Parker, bore a conspicuous part in the discussions and agitations of the day, animating the people in their resistance to tyranny, and preparing them for the trials and sufferings of the great struggle. At the memorable period of the stamp-act, Holt, who then conducted the paper, added to its title the significant motto: "The united voice of all his majesty's free and loyal subjects in America, Liberty, property, and no stamps." In 1774 Holt discarded from the Journal the cut of the king's arms, and substituted in its stead the device of a snake severed into parts, with the motto "unite or die."* If Rivington suffered at the hands of the exasperated colonists, Holt was visited with the royal vengeance in forms scarcely less ruinous. On the approach of the British army in 1776, he was obliged to quit the city and leave his property to be destroyed by the enemy. After a short interval, the Journal re-appeared in Kingston. Driven thence by the capture and destruction of that place in the same year, Holt continued the paper at Poughkeepsie until the termination of the war, when he returned to New York. He died in 1784. His paper, continued by his widow and descendants several years, at length passed into the hands of Thomas Greenleaf.

Early in the present century, the well-known "American Citizen," edited with distinguished ability by James Cheetham, appeared. The "New York Packet," by Samuel Loudon, a native of Ireland, was a spirited auxiliary of the popular cause. That Journal was published at Fishkill while the city of New York was in possession of the enemy.

During the same period, Robertson & Co. of the "Royal American Gazette," and Lewis of the "New York Mercury and General Advertiser," made such an arrangement with the publishers of the other papers as to form a daily publication. But these newspapers were all discontinued at the peace of 1783.

* Thomas's History of Printing.

There were, therefore, at the close of the revolutionary war, nearly one hundred and fifty years after the introduction of printing in Massachusetts, and nearly a century after its establishment in Pennsylvania, only three newspaper publications in the state of New York. These were Holt's and Loudon's, then respectively published at Poughkeepsie and Fishkill, and the "New York Gazetteer," which was commenced in Albany in May, 1782, by Valentine & Webster, and was succeeded two years afterward by the "Albany Gazette," published by Charles R. Webster, and has been continued by him and Websters & Skinners until the present date, 1842. Thirty-nine newspapers were printed at the commencement of the Revolution in all the American colonies.

The earlier newspaper press was extremely circumscribed in its scope and powers. A newspaper rarely exceeded in size half a sheet of foolscap. It was a mere compilation, often crude enough, with "the freshest advices foreign and domestic." How "fresh," the reader, in this day of railroads, steampackets, and second and third daily editions, will learn not without amusement, from the fact that sixteen years after a newspaper was established in Boston, it proposed to issue a half sheet every other week; by which hazardous enterprise it was hoped that the time between the paper and the latest European news, then thirteen months, might be reduced to five. For many years the "Boston News-Letter" contained no more than two advertisements. Until the close of the Revolution, no newspaper was issued oftener than once a week; but with the progress of political events, the press assumed a higher position, and put forth greater energies. It was yet restricted, its rights scarcely understood, its power not appreciated, and its freedom curtailed by judicial decisions; nevertheless, it was advancing in character and importance. The trial of Zenger, the passage of the stamp-act, the claim of parliamentary right to tax the colonies without representation and without consent, and the resistance to those claims on great principles, called forth the patriotism of the colonists; and the press, having then become the organ of an indomitable spirit of freedom, assumed a more elevated tone, and exerted a powerful influence in carrying the cause of the Revolution to its triumphant consummation.

So rapid was the increase of newspapers, that in 1810 the

number of such publications in the United States amounted to three hundred and fifty-nine, of which sixty-six were printed in this state.* These journals, like those published during the Revolution, with rare exceptions, were controversial, and of a political and partisan character. The ability displayed in their columns exceeded that which the press exhibited during the Revolution, in a proportion equal to the sphere to be supplied; but the public taste had not yet become sufficiently refined to reject invective, and to choose always facts and arguments in preference to scandal and recrimination. One or more newspapers were then published in the capital of each county, and their names will recall quite vivid recollections of the civil and political divisions of the state, as they then existed.

In the city of New York there were seven daily newspapers: The New York Gazette and General Advertiser, by Lang & Turner; the New York Evening Post, by William Coleman; the Commercial Advertiser, by Zachariah Lewis, all of which supported the federalist party: the Public Advertiser and the Columbian, edited by Charles Holt, devoted to the republican party; and the American Citizen, by James Cheetham, and the Mercantile Advertiser, which were neutral as to politics. There were also published in the city one semi-weekly and five weekly papers; these were the New York Herald, the Spectator, the Republican Watchtower, the New York Journal, the Columbian for the country, and the Price Current. In the city of Albany, there were three semi-weekly newspapers: The Albany Gazette, by Websters & Skinners, the Balance and New York State Journal, by Croswell & Frary, engaged in defending the policy of the federalists; and the Albany Register, by Solomon Southwick, maintaining the republican cause. All the other newspapers in the state were published weekly, and were as follows: at Sag Harbor, the Suffolk Gazette, a republican paper, by Alden Spooner; at Brooklyn, the Long Island Star, of the same politics, by Thomas Kirk; at Saratoga, the Saratoga Gazette; at Watertown, the American Eagle, by Henry Coffeen; at Peekskill, the Westchester Gazette, a republican paper, by Robert Cromble; at Somers, the Somers Museum, a federal journal, by Milton F. Cushing; at Goshen, the Orange County Gazette, a

* In 1850 the number in the United States had increased to 2,800.

republican paper, by Hopkins & Heron, and the Spirit of Seventy-six and Patriot, by Timothy B. Crowell; at Newburgh, the Political Index, a republican paper, by Ward M. Gaslay; at Kingston, the Ulster Gazette, a federal paper, by Samuel S. Freer, and the Plebeian, a republican journal, by Jesse Buel; at Poughkeepsie, the Political Barometer, republican, by Joseph Nelson, and the Poughkeepsie Journal, federal, by Paraclete Potter; at Hudson, the Northern Whig, federal, by Francis Stebbins, and the Bee, republican, by H. Holland; at Catskill, the American Eagle, federal, by M. Elliot & Co., and the Catskill Recorder, republican, by Macky Croswell; at Lansingburgh, the Lansingburgh Gazette, by Tracy & Bliss; at Troy, the Troy Gazette, a federal paper, by Eldad Lewis, also the Farmers' Register, a republican paper, by Francis Adancourt, and the Northern Budget, neutral, by Oliver Lyon; at Salem, the Northern Post, federal, by Dodd & Rumsey, and the Washington Register, republican, by John P. Reynolds; at Plattsburgh, the American Monitor, republican, by George W. Nichols; at Waterford, the Waterford Gazette, by Horace H. Wadsworth; at Ballston, the Advertiser, republican, by Samuel R. Brown, and the Independent American, federal, by William Childs; at Schenectady, the Mohawk Advertiser, federal, by Ryer Schermerhorn, and the Schenectady Cabinet, republican, by Isaac Riggs; at Johnstown, the Montgomery Republican, federal, by Asahel Child, and the Montgomery Monitor, republican, by Daniel C. Miller; at Herkimer, the Bunkerhill, republican, by George Gordon Phinney, and the American, federal, by J. H. & H. Prentiss; at Utica, the Utica Patriot, federal, by Ira Merrell, and the Columbia Gazette, republican, by Thomas Walker; at Oxford, the Chenango Patriot; at Cazenovia, the Pilot, republican, by Baker & Newton; at Peterborough, the Freeholder, federal, by Jonathan Bunce & Co.; at Manlius, the Manlius Times, federal, by Leonard Kellogg; at Canandaigua, the Ontario Repository, federal, by James D. Bemis, and the Genesee Messenger, republican, by John A. Stevens; at Batavia, the Cornucopia, republican, by Peck & Blodget; at Geneva, the Geneva Gazette, federal, by James Bogart; at Cooperstown, the Otsego Herald, republican, by Elihu Phinney, and the Cooperstown Federalist, federal, by J. H. & H. Prentiss; at Owego, the American Farmer, neutral, by Stephen Mack; at Schoharie, the True American, federal, by

Thomas M. Tilden, and the American Herald, republican, by Derrick Van Veghten; at Sherburne, the Republican Messenger, republican, by Pettit & Percival.* Papers published at Troy, which is nearly equi-distant from the northern and southern boundaries of the state, were then organs of the north; and there were four newspapers printed in the region west of Onondaga, where now more are published than in 1810 supplied the whole state.

The number of newspapers now published within this state is upward of three hundred, being a hundred times more than were printed in the state at the close of the Revolution, and eight times the number printed in the United States at that period.† The more important publications are, in the city of New York, the Courier and Enquirer, by James Watson Webb; the Journal of Commerce, by Hale & Hallock; the New York Express, by Brooks and Townsend; the Standard, by John I. Mumford; and the New Era, by Jared W. Bell—morning papers; the Commercial Advertiser, by William L. Stone; the Evening Post, by William C. Bryant; and the American, by Charles King—evening papers, published upon the old system for regular subscribers: the New York Tribune, by Horace Greeley; the Sun, by Moses Y. Beach; and the Plebeian, by Levi D. Slamm, published upon the new plan of selling indiscriminately for cash. In the city of Albany, the Albany Daily Advertiser, formerly the Albany Gazette; the Albany Argus, by Edwin Croswell; and the Albany Evening Journal, by Thurlow Weed. In the city of Troy, the Troy Daily Whig and Troy Budget. In the city of Utica, the Oneida Observer and the Oneida Whig. In the city of Rochester, the Rochester Democrat and Rochester Daily Advertiser: and in the city of Buffalo, the Buffalo Commercial Advertiser and the Mercantile Courier.

There is scarcely more resemblance between the press as it now exists, and that institution as it was at the close of the Revolution, than between the present aspect of our inland regions and the forest garb they wore while inhabited only by the Iroquois. *Then* the art, employed chiefly in printing the colonial statutes, almanacs, occasional sermons, and volumes of devotional psalmody, and publishing a semi-weekly record of events, was only auxiliary,

* Thomas' History of Printing.

† The number of newspapers published in the state in 1850 was 403.—*Ed.*

in the hands of its managers, to the more important objects of selling books, pamphlets, stationery, and sometimes other merchandise. *Now*, labor-saving machines, with mechanical and brute-power, are substituted for the arm of the pressman, and, with the aid of stereotype-foundries, the press has departments distinctly separated, and as numerous as the divisions and subdivisions, classes, combinations, interests, occupations, studies, and tastes of society. The book-press seizes with avidity all new publications, whether designed to instruct or only to amuse, whether foreign or domestic, and prints and reprints and scatters them over the continent with inconceivable rapidity. Works of fiction most adapted to the popular taste are now printed and sold at prices less than, fifty years ago, were charged to subscribers for the perusal of such volumes by circulating libraries. The commercial press, morning and evening, records with accuracy every occurrence and every indication which affects trade; and the advertising columns are indispensable auxiliaries in every operation of commerce or finance. The political press, divided between contending parties, and again subdivided with nice adaptation to the tempers and the tastes, the passions and the prejudices of the community, conducts party warfare with energy, zeal, and, it must be admitted, with unsparing severity; and the combatants, faithful throughout all changes, abide the trials and share the fortunes of their respective parties. The religious press furnishes to Jew and Christian, Protestant and Catholic, and to each of the sects and denominations of those grand divisions of the church, a devoted organ more effective than an army of missionaries. The moral, the scientific, the literary, the legal, the medical, the agricultural, the military, the abolition, the temperance, the colonization, and the association newspapers, each represent a portion of society desirous to inculcate peculiar views of truth, and promote reforms which it deems essential to the general welfare. The emigrants from every foreign country communicate with each other through organs furnished by the press, and preserve mutual sympathies and endearing recollections of their father-lands. The press *was* dependent on European facts, sentiments, opinions, tastes, and customs: *now*, it is in all things independent, and purely American. It *was* metropolitan: *now*, it is universal. The newspaper in each important town conveys intelligence of all interesting incidents which occur within its

vicinity, to the central press, and receives in return and diffuses information gathered from all portions of the world.

The press studies carefully the condition of all classes, and yields its reports with such a nice adaptation of prices as to leave no portion of the community without information concerning all that can engage their curiosity or concern their welfare. It no longer fears the odious *information*, or the frowns of power; but dictates with boldness to the government, and combines and not unfrequently forms the public opinion which controls everything. Yet the press is not despotic. Its divisions distract its conduct, and prevent a concentration of its powers upon any one object. That the newspaper press is capricious and often licentious, will scarcely be denied; yet if it assails, it arms the party assaulted with equal weapons of defence, and yields redress for the injuries it inflicts. The ability, learning, and spirit, with which the press is now conducted, strikingly contrast with the dullness and superficial learning of its earlier period. Its editors, no longer regarded as mere chroniclers of events or pains-taking mechanics, hold rank as a liberal profession, and exert a just influence upon the multifarious interests of society. Nor are the sweeping allegations of indecorum, venality, and violence, brought against the press in any sense just. That it sometimes offends propriety, decency, and candor, is unhappily too true, but it reflects in all things the character of the country; and while the ignorant, the prejudiced, the malevolent, and the vulgar, can not be deprived of its weapons, it never generally, nor long, withholds its resistless influence from truth, wisdom, justice, and virtue. Every improvement of the public morals, and every advance of the people in knowledge, is marked by a corresponding elevation of the moral and intellectual standard of the press; and it is at once the chief agent of intellectual improvement and the palladium of civil and religious liberty.*

There were in New York, in 1762, two Dutch Reformed churches, and religious worship was celebrated therein in the language of the Netherlands. These and all other associations of that denomination acknowledged subordination to the classis

* Notes on the History of the Press until the close of the Revolution were received from Edwin Croswell, Esq.

of Amsterdam, which some times permitted, and other times refused powers of ordination. The expenses attending the journeys of candidates for ordination to Holland, and the reference of disputes concerning doctrine and discipline, to foreign judicatories, induced a portion of the clergy, even at that day, to seek a domestic organization. There were also two Protestant Episcopal churches which were more independent; but still the bishop was obliged to go to England for orders, before he could exercise his ecclesiastical functions; and rectors were required to be instituted and inducted, agreeably to the king's instructions to the governor, and the canonical rights of the bishop of London. The presbyterians had one church, and aimed at ecclesiastical independence, but all such efforts were defeated by the opposition of the episcopalians; and to save their little edifice and grounds, the former conveyed the glebe, in 1730, to the moderator of the general assembly of the church of Scotland and others, as a committee of that body, and received from it a declaration that "the property was held on condition that it should be free and lawful for the presbyterians in the city of New York and its vicinity to convene in the edifice for the worship of God in all the parts thereof, and for the dispensation of all the gospel ordinances." Besides these churches, there were a small French church, two German Lutheran societies, a Friends', a Moravian, and Anabaptist meeting-houses, and an obscure synagogue. But the dependence of the church had one advantage. Many of the clergy had received a transatlantic education, while this country was destitute of proper seminaries, and the reproach of ignorance did not attach to the theological profession.*

One of the most serious obstacles in the way of the revolutionary cause, was found in the apprehensions indulged by persons connected with the English established church, that religion, here deprived of the sustaining support of the mother-country, must languish, and infidelity and vice disappoint the hopes of those who had the disseminated principles of civil liberty. Experience has shown that this was a capital error, and that independence has been even more beneficial to the necessary diffusion of religious instruction throughout the continent, than to the political progress of society. We need only refer to the condi-

* American Gazetteer, 1762.

tion of the church in the city of New York previous to the Revolution, to show how incompetent a colonial religious establishment would have been to educate and send abroad the clergy and missionaries required among a growing people. The apprehensions to which we have referred were by no means general among the episcopalians, who soon became sensible of the injury which their church was receiving from that source, and from a prevalent prejudice that the episcopal form of government had a peculiar affinity for monarchical institutions. The best efforts of the clergy were put in requisition to refute these prejudices, and in many of the pamphlets, written for that purpose, may be found very able arguments against a union of the church and the state, and in defence of the cardinal principle that religion is best promoted, and most fruitful of blessings, when wholly independent of the patronage and control of government.

Soon after the Revolution, all the religious denominations in the state, with one exception, had risen to ecclesiastical independence. Candidates for the clergy, for many years, obtained their theological education in the private study of some approved divine of their particular sect. But provision was early made to guard against the admission of unqualified candidates, by an open examination before the body which conferred orders. The advantages, however, which would be afforded by public institutions for theological education were too obvious to be overlooked. The "Theological Seminary of the Associate Reformed Synod of New York" was established in 1801, through the efforts of the Reverend John M. Mason, D. D., and was the first theological institution in the United States. Dr. Mason was elected the only professor of the school in 1804, and it went into actual operation in 1805. It received a valuable theological library, procured in Europe in 1802, by the personal solicitations of its founder. He relinquished his office after about fifteen years. The school was removed to Newburgh, and received a charter in 1825. It has three professors and eleven students, and a collection of 4,000 volumes. The Lutherans, in 1815, established the Hartwick Theological Seminary, at Hartwick, in Otsego county. It had two professors, some ten or twelve students, and a library of 1,000 volumes. The Theological Seminary of the Protestant Episcopal Church in the United States, was instituted in the city of New York in 1817. It was removed to New Haven in 1820,

but restored to New York in 1821, and was then incorporated. It has now five professors, seventy-four students, and about 7,260 volumes in its libraries. It has given to the church one hundred and eighty-six ministers. The Presbyterian Theological Seminary, at Auburn, was founded in 1821. It has four professors, sixty-nine students, and libraries containing 5,000 volumes, and has sent forth into the vineyard of Christ three hundred and forty-four laborers. The presbyterian "New York Theological Seminary," in the city of New York, was established in 1836, and has four professors, ninety students, and libraries containing 12,000 volumes. The Baptist Association have founded an academical institution at Hamilton; the Methodists a similar one at Lima; and the Catholics a like institution at Rose Hill: with a laudable purpose respectively of elevating the standard of education among their clergy.*

Although the various divisions of the church have generally observed forbearance toward each other, and a good degree of harmony has prevailed among their own communions, there has been enough of controversy to test the learning and skill of the clergy in polemic divinity. The first instance of this kind occurred in the Reformed Protestant Dutch Church, and is known in its annals as the "coetus and conferentic controversy." The inconveniences of dependence upon the classis of Amsterdam, before mentioned, induced certain ministers, in 1737, to propose the plan of a coetus or assembly of ministers and elders, which should have merely powers of advice and admonition. This plan which was adopted and approved by the church in Holland, called forth the exertions of the Reverend Theodore J. Frelinghuysen. The arrangement proved inefficient, and, in 1754, the church was distracted by two parties, the one called the coetus insisting on casting off ecclesiastical connection with the classis of Amsterdam; the other, the "conferentia," which struggled to maintain that connection. The weight of learning was on the side of the latter; but zeal, industry, and more practical preaching, distinguished the former. The controversy was finally settled in 1772, chiefly through the agency of the Reverend Dr. John H. Livingston, and the Reverend Dr. Laidley of New York, and the Reverend Dr. Eilardus Westerlo of Albany, and the Reverend Dr. Theodoric Romeyn of Schenectady.

* The Universalists also have an Academy at Clinton, Oneida county.—*Ed.*

In 1805, Dr. William Linn commenced, in the "Albany Sentinel," a series of strictures upon a work then recently published by the Reverend John H. Hobart, afterward bishop of the Protestant Episcopal Church, entitled "A Companion for the Altar," in which the peculiar claims and tenets of the *Episcopal* ministry, in regard to divine ordination, were set forth. Mr. Hobart's doctrines were defended with great ability by Thomas Y. How, Esq., under the signature of "A Layman of the Episcopal Church," and by the Reverend Frederick Beasly of Albany, under the name of "Cyprian." Dr. Linn rejoined, and thus drew into the controversy Bishop Moore, who assumed the name of "Cornelius;" Bishop White of Pennsylvania, under the name of "Detector," and Mr. Hobart, under the signature of "Vindex." Dr. Linn, under the signatures of "Umpire" and "Inquirer," defended himself with great ability against these new antagonists. These essays constitute a part of our theological learning. In 1806, the Reverend John M. Mason, D.D., reviewed these essays in the "Christian's Magazine." Whatever may be thought of the merit of the controversy, it is universally admitted that the review was written with extraordinary force and brilliancy, logical acumen, and point. It excited great interest, and the whole controversy is worthy of a re-perusal. Dr. Mason is remembered as a man of ardent temperament, great genius, high literary attainments, and deeply versed in all the learning of his profession, and as a fearless commentator on the tendency of passing events. He employed the whole powers of his intellect in expounding the Scriptures, and excelled in eloquence and persuasion all his contemporaries.* The Reverend Samuel Miller, D.D., in 1807, published letters on the constitution and order of the Christian ministry, which engaged him in a controversy concerning that important doctrine with Thomas Y. How, the Reverend Dr. Bowden of Columbia College, the Reverend Dr. Kemp of Maryland, and Dr. Hobart, afterward bishop. Dr. Miller's portion of this controversy is held in high estimation by that portion of the church whose views accord with his own. The "Triangle," by the Reverend Samuel Whelpley, is still remembered as a masterly performance.

In pulpit eloquence, the Reverend Dr. Mason's discourse upon the death of Hamilton, and baccalaureate addresses by the

* M. C. Patterson's Address on Primary Education.

Reverend Eliphalet Nott, D. D., president of Union College, are productions of a high order.*

A colonial writer, to whom we have before referred, describes the medical profession as worthy of very little respect, and declares "that pretenders have recommended themselves to a full practice and profitable subsistence. This," he adds, "is the less to be wondered at, as the profession is under no kind of regulation. Loud as the call is, they have no law to protect the lives of the king's subjects. Any man at his pleasure sets up for a physician, apothecary, and chirurgeon. Candidates are neither examined nor licensed, nor are they even sworn to fair practice."

Nevertheless, we find occasional notices of medical prescribers who had enjoyed the advantages of sound education at foreign universities, and who dispensed the benefits of their knowledge in this their adopted country. Megapolensis, Dupie, Dubois, Beekman, Magrath, John Bard, Middleton, Clossy, and Farquhar, were justly conspicuous. Dr. Cadwallader Colden, who was surveyor-general, and subsequently lieutenant-governor of the province, was eminent not only as a philosopher and a naturalist, but as a physician and medical writer. We are indebted to him for the first scientific account which we have of the climate and diseases of the city of New York. We have in this work satisfactory evidence, that owing to the "clearness" and purity of the atmosphere, and its vigor in the spring season, consumption of the lungs is not an endemical disease, and hence it results that the prevalence of pulmonary affections has been produced by erroneous personal and social habits. Dr. Colden's elaborate paper on the management of the fever of New York, which prevailed in 1742; his account of the plant called "water dock," and his earnest recommendation of the cooling process, in the cure of fevers, an innovation on the therapeutic measures of that age, are yet held in high estimation.†

Dr. John Bard, already mentioned, published an able essay on the nature and cause of malignant pleurisy, which proved very fatal on Long Island in 1749, and astonished his medical brethren in New York in 1795, by identifying at once the pestilence,

* Notes concerning the clergy were received from the Reverend Dr. J. N. Campbell, and the Reverend T. C. Reed.

† Dr. Francis's Discourse before the New York Lyceum of Natural History.

which then ravaged the city, with the malignant yellow fever, of which not a case had occurred within his observation, since its previous visit in 1742.

His son Samuel Bard, while a student at the university of Edinburgh, received the Hope medal as an acknowledgment of his acquirements in botany, and his inaugural dissertation, *de viribus opii*, attracted the attention of the erudite Haller. He made other contributions to medical science, of which his "Inquiry into the nature, cause, and cure, of the Angina Suffocativa," or sore throat, a disease attended with great mortality in New York, will perhaps be longest remembered.

Dr. Jacob Ogden, of Long Island, in 1769 and 1774, addressed to the public letters on the same disease, which are worthy of reference, because they urge with boldness the mercurial practice, which, although it had been before suggested by Dr. Douglass, had not yet obtained any general favor.

Dr. Richard Bayley, in 1781, published a letter to Dr. William Hunter of London, on "Angina Trachealis," or the croup, setting forth a new mode of cure of that very alarming and too often fatal inflammation, and subsequent experience in this and other countries has confirmed the utility of the discovery.

In 1769, a medical faculty was projected and associated with the academic corps of King's, now Columbia College. This measure awakened an active spirit of inquiry into the sciences tributary to the healing art. Middleton, Bard, Smith, Tennant, Clossy, and Jones, the first professors, were eminent in their respective departments. Middleton exhibited research and learning in a comprehensive discourse on the history of medicine. Clossy had written with success on morbid anatomy. The first instance in which the degree of doctor of medicine was conferred in this state was in 1771, when Samuel Kissam received that honor. A copy of his inaugural dissertation on the anthelmintic virtue of the *phaseolus zuratensis siliqua hirsuta*, is preserved in the library of the New York Historical Society. The medical school connected with King's College was visited with the same misfortunes which befell that institution during the Revolutionary war. Efforts made by the regents of the university, after the return of peace, to reorganize the medical faculty, were unsuccessful. In 1792, however, the trustees announced the re-establishment of the school, and Doctors Bailey, Post, Hammersly,

Rodgers, Mitchill, Hosack, and Stringham, labored assiduously as professors during several years. The "College of Physicians and Surgeons" in the city of New York was founded under a charter granted by the regents of the university in 1807. Nicholas Romayne, as president of this new school, delivered an inaugural discourse, evincing varied knowledge and very original views on the physiology of the different races of the human species. Smith, Hosack, De Witt, Miller, Bruce, and others, professors in this institution, gave it a high reputation, and secured popular approbation of its instructions; but a rivalry between it and the medical school of Columbia College was justly regarded as a public misfortune, and in 1813 the two institutions were combined. In the new faculty, anatomy was assigned to Dr. Post, the practice of physic to Hosack, chemistry and pharmacy to Dr. Macneven, surgery to Dr. Mott, materia medica to Dr. Francis, obstetrics to Dr. Osborn, mineralogy to Dr. Mitchill, and medical jurisprudence to Stringham. The school flourished many years; but at length, in 1826, professional rivalry, and the deaths of some of the professors, so embarrassed the survivors, that they resigned their chairs, and retired with the thanks of the regents for their eminent ability and assiduity.

The regents appointed a new faculty, consisting of Doctors Watts, J. A. Smith, Stevens, Dana, J. M. Smith, Delafield, and John B. Beck; and Dr. Watts became president of the institution, which, with some changes in its corps of teachers, still continues to dispense medical knowledge. The faculty which had retired established a new school under the sanction of Rutgers college of New Jersey, and gave lectures for a time in the city of New York, which were received with high favor; but, a charter being denied them, they discontinued their labors in 1829.

The University of the city of New York has recently established a medical faculty, in which Dr. Mott lectures on surgery, Dr. Patterson on anatomy, Dr. Paine on the materia medica, Dr. Draper on chemistry, Dr. Revero on the practice of physic, and Dr. Bedford on obstetrics. About four hundred pupils are now annually educated in the medical profession in the city of New York.

The College of Physicians and Surgeons of the western district was founded at Fairfield, in Herkimer county, in 1812, under a

charter granted by the regents. The institution flourished many years, but has recently been discontinued, and its professors have been transferred to the new Medical College recently established at Albany. The faculty of this institution combines much talent and learning.

A faculty of medicine equally respectable and efficient has been established at Geneva College, and is diffusing medical knowledge very extensively to the numerous candidates for the honors of the profession in the western region of the state. The medical schools last mentioned have received liberal aid from the public treasury, and they deservedly enjoy the nurturing care of the regents of the university.

Returning from this brief account of institutions for medical education to our notice of the early progress of the healing art, we find a short paper written by Michaelis during the Revolutionary war, showing the importance of opium as applicable to certain conditions of the human system, being an essay containing interesting results of his practice among the foreign troops. North, a physician attached to the British army in New York about the same time, introduced his apparatus for facilitating the inhaling of medicated vapors, since so widely approved in Europe. Magrath, an Irish physician in the same city, deserves to be remembered for his strenuous efforts to introduce the cooling process of treatment of febrile diseases. Surgery found an intrepid operator in M'Knight. Bailey, Bard, and Treat, were distinguished in clinical toil, and Crosby and Dingley are remembered as skilful practitioners.

Dr. Addams published, in 1791, the first American tract on the subject of yellow-fever. The subsequent recurrence of that pestilence in 1795 called forth essays by many medical writers; among whom were Buel, E. H. Smith, Mitchill, Seaman, and Bayley. The latter aimed to establish a distinction between infectious and contagious diseases, until that time too generally confounded by physicians.

The dreadful ravages of the yellow-fever in the United States, and reports too fearfully authentic of calamities inflicted by a like plague on the coast of Africa and in the West Indies, had created a spirit of philosophic inquiry into the origin of the disease, when Dr. Priestly arrived in this country. Recognised as the author of the gaseous philosophy, which was expected to

throw new light upon the subject, his presence stimulated the eagerness of research into the nature of fevers and of pestilence in general. Dr. Mitchill put forth a treatise on the qualities of the nitrous oxyde gas, and entered into a controversy with Priestly concerning the nature of phlogiston. The recurrence of the disease with undiminished virulence in 1798, 1801, 1803, 1805, 1819, and 1822, prolonged the discussion thus commenced. Notwithstanding all that has been written, the nature of the pestilence is a mystery yet to be unfolded; but it is just to affirm that the learning, talents, and clinical acumen, which the subject has called forth, reflect honor upon the professors of the healing art.

The writings of Dr. Miller, and his new nomenclature of febrile and pestilential diseases, have had a wide circulation. The numerous contributions to medical science by Dr. Hosack, have had much influence on the minds of professional and general readers; and he is distinguished for having projected a new classification of contagious diseases.

In 1816, a new topic of inquiry was presented here, as well as in Europe, involving the question whether the human system was susceptible of the yellow-fever a second time. Dr. Francis, then in London, addressed a letter of inquiry on the subject to the medical faculty of the United States; and the result of the testimony acquired seemed to show, that after one visitation, the human constitution has generally an exemption from that disease. Dr. Townsend, in his treatise on the yellow-fever as it manifested itself in 1822, corroborated this conclusion; but after all, on a point of such deep interest to humanity, further inquiry seems desirable.

Dr. Hugh Williamson's "Observations on the Climate in Different Parts of America, compared with the Climate in Corresponding Parts of the European Continent," is a work of much interest. His exposition of the meliorating effects of cultivation of the earth upon the temperature of the country, is very cheering to the philanthropist. The disquisitions of Dr. Samuel Forry, on the climate of the United States, and its endemic influences, challenges the attention of the philosopher as well as of the physician.

A disease designated by several names, as "spotted fever," "malignant typhus," "typhoid pneumonia," and other appella-

tions, prevailed extensively in 1812 and 1813. Treatises on this pestilence were given to the public by North, Hosack, Hudson, Arnell, and several other contributors to the New York Medical Repository, and to other periodical journals.

The appearance of the cholera asphyxia, in 1832, at New York and at Albany, and shortly afterward its extensive ravages in other parts of this state and the United States, awakened medical ardor, and the new enemy was encountered with energy and with clinical acumen. It numbered four thousand victims in New York, and was proportionably not less fatal in Albany. Francis, Paine, M'Naughton, and Reese, were distinguished by their examinations into the origin and nature of the disease. It is deeply to be regretted that we are still without a direct and perfect history of this, and the various other epidemics which have prevailed at different periods. The influenza spread over our territory in 1807, in 1811, and in several subsequent years. The scarlet-fever and measles have, during the last twelve years, been unusually rife, and the varioloid, or modified small-pox, has again and again intruded, and sometimes with great malignity. Have the two former diseases acquired more power with their increasing virulence? Has the frequent recurrence of the varioloid a tendency to impair confidence in the efficacy of vaccination? These are inquiries in which the happiness of mankind is deeply interested.

Previously to the Revolution, and for some time afterward, the art of surgery was neglected. The United States furnished no schools, and chirurgical knowledge was confined to those who had received a foreign education. A post-mortem anatomical examination is recorded as early as 1691. The subject was the body of Governor Sloughter, who had suddenly died under circumstances creating a suspicion of poison. The account of the dissection was sufficiently minute and satisfactory to do away the imputation, and the pathological conclusions of the surgeons concerning the cause of death corresponded with the received doctrines of that age. The earliest anatomical dissection, for the purpose of imparting knowledge, was performed in 1750, by Doctors John Bard and Peter Middleton; the subject was a convicted felon.

John Jones, already mentioned as one of the faculty of King's College, first performed the operation of lithotomy in the city

of New York. He produced, in 1775, "Plain Remarks upon Wounds and Fractures," which was the first surgical treatise printed in America, and became a text-book. Dr. Bayley, in 1782, successfully performed the operation of amputating the arm at the shoulder-joint, which had not before been attempted in this country. Dr. M'Knight, in 1790, accomplished a bold and difficult operation in obstetrics, until then unattempted here, except in a case thirty years before, when it was performed by Dr. John Bard.

Surgery is now taught in all our medical schools, and facilities are afforded in them all for the study of practical anatomy. Yet there is a deficiency of advantages for imparting that perfect clinical instruction that can only be given in an infirmary, where the various surgical operations are performed for the relief of patients. The New York Hospital is the only institution in the state possessing such advantages. This institution was founded in 1770, at the suggestion of Dr. Bard; but the war prevented its being open for the reception of patients until 1791. The students of the medical schools in New York enjoy the advantages it affords. Among the surgeons who have acquired reputation since the Revolution, we may name Dr. Wright Post, who has the merit of having, in 1817, first performed successfully the operation of tying the subclavian artery. In 1818, Dr. Mott tied the arteria innominata, in the person of a patient who had a subclavian aneurism, an operation never before attempted. The difficulty of performing this operation, without fatal consequences, results from its effects to stop almost the whole direct supply of blood from one side of the head and from one arm. The patient died twenty-six days after the operation, in consequence of secondary hemorrhage; but it satisfactorily appeared that the ligature had not prevented a necessary supply of blood, and thus one source of apprehension concerning this operation was removed. It has been repeated once by Graefe, of Berlin. His patient died sixty-seven days after the operation. Dr. Mott, in 1827, applied a ligature to the common iliac artery, to cure an aneurism, an operation never before attempted for that purpose; and in 1828, he exscinded the clavicle in a case of osteo-sarcoma of that bone, an operation, until that time, unknown in surgery.

Pomeroy White, of Hudson, was the first surgeon in this country who tied the internal iliac artery. We can not leave these notices of chirurgery, without mentioning the high merits in that department of Alexander H. Stevens, John C. Cheesman, and J. K. Rodgers.

Physiology has only recently engaged attention in this state. A young Canadian received a musket-shot in the side, which carried away a portion of the walls of the thorax, and perforated the stomach. He recovered from the effects of this injury under the care of Dr. Beaumont, a surgeon in the army, residing in this state; but a fistulous opening in the stomach remained, through which articles of food might be introduced or withdrawn, and the aperture permitted visual observations of the organ. The case was rare, and almost unique in the annals of medical science, and certainly in no other instance had such an one been made so profitable to physiology. By a series of observations and experiments, continued for a long time, Beaumont arrived at these results: 1st. The existence of a gastric juice secreted by the stomach, and exciting a solvent action on food. 2d. This gastric juice is found in the stomach only when it is excited by the presence of food or other irritants. 3d. The period required by the stomach for digesting different substances, the effects of various agents and the phenomena attending the different stages of digestion. These observations were made at intervals from 1825 to 1833, and were published in the latter year at Plattsburgh. The government of the United States made a marked acknowledgment of this eminent contribution to medical science.

Dr. Dyckman's dissertation on the pathology of fluids is held in high estimation. In the same class of publications may be noted "An Essay on Poisons," by Henry W. Ducachet; and "Experiments on the Blood," by Dr. Macneven. Investigations, to considerable extent, have been made by Dr. Francis, on the hydrostatic test of Hunter, to ascertain the viability of fetile and infantile life.

Independently of the connection of physiology with the medical art, the science has recently acquired interest as a part of general education in our colleges and academies, and forms the subject of a popular treatise written by Dr. Lee, of New York, and introduced into the school district library. The diffusion of such knowledge throughout the country reacts upon the pro-

fession, and encourages its members to more careful and accurate investigation of the physical constitution.

Dr. Stringham of Columbia College, and of the College of Physicians and Surgeons in the city of New York, delivered very interesting lectures upon medical jurisprudence. The course of instruction upon the same science has been continued in that institution by John W. Francis, and John B. Beck. Dr. Francis has published several essays on subjects falling within that department: and has dwelt upon its relations to the science of obstetrics in his edition of the work of Dr. Denman. Dr. Blatchford of Troy, in 1817, published an essay on feigned diseases, which contains the results of much curious observation. T. Romeyn Beck and John B. Beck have given us, under the name of the former, a volume on the science of medical jurisprudence, which has contributed to modify, in many important features, our code of criminal law; and which is admitted in Europe to be the best work on the subject written in our language, and to display more discriminating and patient research, free from ostentation of learning, than any work in the same department now extant.

The periodical medical journals merit at least a passing notice. The Medical Repository was begun by Drs. Smith, Mitchill, and Miller, in 1797, and continued through twenty-three annual volumes. The American Medical and Philosophical Register appeared in 1810, and was conducted by Dr. Hosack and Dr. Francis. The New York Medical and Philosophical Journal was published in 1809, and the two succeeding years, under the superintendence of Dr. Smith, Dr. De Witt, and Dr. Macneven. The New York Medical and Physical Journal was commenced in 1822, and continued several years, by Drs. Francis, Beck, and Dyckman. The New York Medical and Surgical Journal, extending to four volumes, was published anonymously in 1840 and 1841. The New York Medical Gazette is a contemporaneous work.*

So intimate has been the connection between political science and jurisprudence, and so much have the members of the legal profession been identified with the patriots and statesmen who have overthrown a system incompatible with the development

* Notes concerning Surgery and Physiology were furnished by Thomas Hun, M. D.

of the state, and perfected a republican government in its place, that we shall not assign to the bar a distinct place in these notes, but shall occasionally advert to its condition and progress in a brief sketch of the political history of the state.

As we have seen, the germ of New York was a shoot from a commercial aristocracy. The Dutch, who had no popular liberty nor representative legislation at home, bestowed no thought on colonial representation. The company by whom the colony was founded had an absolute power over its government.*

The form of government established was essentially feudal. Charters were given to patroons, conveying large grants of land to be occupied by a tenantry, over whom the proprietor exercised military and judicial authority, personally presiding in his courts of justice; but in important cases appeals were reserved to the governor.† Such jurisprudence, as was then known in the colony, was derived from the civil law.‡ The institution of human slavery was contemporaneous with the foundation of the colony, "the company pledging itself to furnish the colonial manors with negroes, if the traffic should prove lucrative." No legal provision was made for the diffusion of religion or knowledge. The jealous spirit of commercial monopoly in Holland forbade the colonies to make any woolen, linen, or cotton fabric, on penalty of exile; and to impair the monopoly was punishable as a perjury.‖ The first fruits of such a charter were seen in the venality of the directors and agents of the company, who soon appropriated to themselves, under pretence of founding settlements, all the important points where the natives came to traffic, and jars and dissensions between the feudal possessors and the government necessarily followed. Nor did the inhabitants of the province immediately gain political advantages from the conquest by the English. Nichols, by whom the reduction of the colony was effected, and who was the first English governor, during his short stay in New York, enriched himself as did many of his successors, by making new grants of land and exacting compensation for confirming those previously made. The governor chose his own council, and exercised executive and legislative powers. A court of assize was constituted, but the justices were appointed by the governor and dependent on him, and served only to increase his importance while diminish-

* Bancroft. † Barnard's Discourse ‡ Kent. ‖ Bancroft.

ing his responsibilities. He called a convention of two deputies from each town, but conceded to that body no legislative powers; and the assembly, after settling the civil divisions of the colony, concluded their labors with a loyal address to the proprietor and retired, without having transcended the limits assigned by his representative. Yet the inhabitants had suffered so long the inconveniences of arbitrary government, and indulged such high expectations of participating in the enjoyments of the rights of subjects, on becoming a part of the British empire, that a spirit of liberty was awakened among them, which was never afterward to be repressed.

Governor Lovelace, the successor of Nichols, continued to exercise the same unlimited authority, and levied taxes and imposed duties, without consulting the inhabitants. The people assembled, in many places, and addressed to the court of assize, petitions, in which they reprobated their exclusion from legislation, and the principle of taxation, without consulting the people, as inconsistent with the English constitution. Failing to obtain any important concessions, the inhabitants in several towns resolved to withhold payment of taxes. These resolutions were laid before the court of sessions of the West Riding, whose jurisdiction then extended over Staten Island, Newtown, and Kings county. That court, assisted by the colonial secretary, and one of the council, adjudged the representations scandalous, illegal, and seditious; and the papers having been laid by the governor before his council, were, in pursuance of their orders, burned by the common hangman.*

The new patent granted to the Duke of York, in 1674, made no concession of popular rights, but confirmed his power to enact all such ordinances as he or his assigns should think fit, reserving a right of appeal to the king and his council. No person could trade with the province, without the proprietor's permission, and he was authorized to establish such imposts as he should think necessary. The arbitrary proceedings of Andross, in 1675, called forth meetings, in which the people expressed a firm determination to persist in their claims for a representative legislature. Those claims were submitted, by the governor, to his patron. James replied, "I can not but suspect assemblies would be of dangerous consequence; nothing being more known, than the apt-

* Dunlap.

ness of such bodies to assume to themselves many privileges which prove destructive to, or very often disturb the peace of the government, where they are allowed; neither do I see any use for them. Things that need redress may be sure to find it at the quarter sessions, or by appeals to myself." The discontent of the colonists was not allayed by this answer. The governor proceeded to England for instructions, and returned with the information that the proprietor had condescended to limit to a term of three years the existing arbitrary imposts; a concession, which only served to excite universal disgust. The influence of William Penn, however, prevailed upon the Duke of York, and he granted, in 1683, what was called a "charter of liberties." It declared that supreme legislative power should for ever reside in the governor, a council, and the people; and gave to freeholders and freemen the privilege of voting for representatives. The assembly consisted of seventeen members, a number which was gradually increased to twenty-seven before the commencement of the Revolution; and the charter declared that no tax should be assessed on any pretence whatever, without consent of the assembly. But the governor was appointed by the proprietor, and the council were appointed by the governor, and both the governor and proprietor retained the right to negative all bills, and to prorogue and dissolve the assembly. No sooner had the duke ascended the throne of England, than he sought to overturn the constitution which had thus been founded. He decreed a direct tax upon the colony, by ordinance, and instructed the governor to reorganize the council, and to make laws, levy taxes, and control the militia, with the consent of the council alone; and added to these instructions an injunction to suffer no printing-press to be established in the colony.

The Revolution of 1688 was hailed throughout the colony as the harbinger of liberty. The general assembly was again reorganized, and the government assumed forms somewhat conducive to the maintenance of law and order; but still denying to the people rights enjoyed by their fellow-subjects in England, and maintaining a policy injurious to the growth and prosperity of the colony. The governor was directed by Queen Anne to take especial care that the Almighty should be devoutly and duly served according to the rites of the church of England, and to give all possible encouragement to trade and traders, "particu-

larly to the Royal African Company in England;" which company was expressly desired by the queen, "to take especial care that the colony should have a constant and sufficient supply of merchantable negroes, at moderate rates." No commodities were allowed to be imported into the colonies, or exported thence, but in vessels built in England, or in some one of her colonies, and navigated by British crews. The colonies were prohibited from exporting to any other country than England, and imposts were established by the royal government.

In 1703, the assembly, justly complaining of the misapplication of the colonial revenues, insisted upon the establishment of a treasury. Governor Cornbury refused to comply with this demand, saying to the assembly that "they talked of their rights," but he knew of "no rights they had as an assembly but such as the queen was pleased to allow." But the governor was nevertheless dependent upon the assembly for supplies, and that body, unmoved equally by executive influence and prerogative, became continually more democratic.

The judiciary of the colony consisted of such inferior courts as those held by justices of the peace, courts of session, and courts of common pleas, and the supreme court, which was as it now is, a court of general, civil, and criminal jurisdiction. In 1712, Governor Hunter, by the advice of his council, and without the consent of the assembly, and for the purpose of increasing the royal power, erected a court of chancery, assumed to himself the powers of chancellor, and appointed the requisite number of masters, with an examiner, register, and clerks.

The effect of this institution was to increase the power of the crown, and to diminish that of the assembly. That body thereupon protested against the establishment of the court, as an act of royal usurpation; but the lords of trade who then had superintendence over the affairs of the colony, affirmed her majesty's right to institute as many courts as she thought proper. The controversy on this subject formed one of the grounds of the division of parties until the Revolution. The ignorance and venality of the governors, and the extortions practised in the court, tended greatly to increase the popular odium; but Governor Burnet was exempt from these reproaches.

In 1724, a collision arose between the governor and the assembly, upon his refusing to administer oaths to a member named

De Lancey, who had been returned as a member of the assembly, on the ground that he was not a subject of the crown. The assembly claimed the right to judge of the qualifications of its members. This right of the assembly was not afterward questioned.

It is recorded, to the honor of Governor Montgomerie, who entered upon his administration in 1728, that he declined to officiate as chancellor until he received positive directions from the ministry. About this period in the history of the colony, the legal profession begins to claim attention.

Our first lawyer was Adrian Vanderdonk. He was educated at the university at Leyden, and came to America in a bark belonging to the patroon of Rensselaerwyck, in 1642. He resided in the last-mentioned manor several years, filling the office of *scout*, which combined to some extent the duties of judge and sheriff. He subsequently removed to New York, then New Amsterdam, where he acted as chamber counsel, the government denying to him permission to appear in the courts, because there was no other lawyer to confront him. He signalized himself, in 1650, by a remonstrance to the states-general, upon the abuses of power in the colony, and in 1653, by his description of the New Netherlands. The bar of the colony, in 1716, admitted to its honors William Smith, the father of the historian, and James Alexander, father of Lord Stirling, who afterward rose to eminence.

Rip Van Dam, lieutenant-governor, performed the executive duties in the interval between the death of Montgomerie and the arrival of Colonel Cosby, who was appointed the successor. Cosby had instructions to relinquish to Van Dam one half of the salary and perquisites of the office, which had accrued during his administration; and, upon Van Dam's refusal to refund, assumed to clothe the judges of the supreme court with the dignity of barons and the powers and jurisdiction of exchequer, similar to those of the court of exchequer in England, in order to facilitate a recovery by the governor of his claims against his predecessor. Smith and Alexander, of counsel for Van Dam, excepted to the exchequer jurisdiction of the court. Lewis Morris, then chief-justice, supported the exceptions, but was overruled by judges De Lancey and Phillipse. This decision, overruling the plea of Van Dam, excited high indignation among the people.

The governor, nevertheless, removed the chief-justice, whom he could not overawe, and the subservient De Lancey was, without consulting the council, appointed chief-justice; a promotion for which he manifested his gratitude, by directing all his efforts to procure the indictment and conviction of Zenger, for the libel before mentioned, and the detection of the authors of other libels in the "Weekly Journal." In 1735, Alexander and Smith, who appeared as counsel for Zenger, filed exceptions to the commission of the judges, De Lancey and Phillipse, on the ground that the tenure specified in the commission was during pleasure, and not during good behavior, and for other causes. The judges met the exceptions with the answer, "You have brought it to that point that either we must go from the bench, or you from the bar," and excluded the contumacious lawyers, as has been already mentioned. These proceedings, together with those on the subsequent trial of Zenger, gave new violence to the political dissensions already raging in the colony.

A bill was passed in the assembly for the frequent meeting and calling of the general assembly; but the council amended it in such a manner as to change its effect, and it failed to become a law. In 1735, Mr. Garretson, a member from Kings county, submitted a report to the effect, that the maintenance of a court of chancery within the colony, without consulting the general assembly, was contrary to law, unwarrantable, and of dangerous consequence to the liberties and the property of the people, and the house concurred in the report. Still, Governor Cosby, finding the assembly more practicable than he had a right to expect, from the temper of the times, a succeeding one would be, continued that body, for a period of six years, refusing to dissolve it, or issue new writs of election; which term was prolonged three years by his successor. These grievances justly irritated the people, and they are recorded in the declaration of independence among the wrongs suffered at the hands of the king of Great Britain.

The general assembly of 1737 truly represented the spirit which then pervaded the people; and its proceedings are regarded as constituting an important era in the history of American legislation. In their address to the governor, they affirmed that none ought to represent the people but such as were freely and fairly chosen by them; that elections ought to be frequent;

that experience had shown the danger of trusting the same men too long with power; and that proper checks and balances were necessary for the preservation of the liberty and happiness of any country. The assembly distinctly informed the representative of the crown, that they would not raise sums unfit to be raised, nor put what they should raise into the power of the governor to misapply, if they could prevent it; that they would not at any one time make provision for the support of government for a period longer than a year, nor would they even for that period, until such laws should be passed as were necessary to the safety of the inhabitants of the colony. They asserted the importance of having an agent at the court of Great Britain, appointed and paid by the house, independently of the governor. They firmly remonstrated against the continuance of the court of chancery, as then constituted, declaring that the governors, in maintaining that court without the consent of the assembly, had treated that body with unreasonable neglect and contempt, and affirmed that some of the governors were wholly unfit for the duties of chancellor or of any other station, though buoyed up and bloated with flatteries by the instruments of their misrule and oppression. The house now first adopted the important principle of recording the votes of members. They passed a bill to appoint an agent to the court of Great Britain, which was lost by non-concurrence, as to its principal features, by the council; demanded from that body satisfaction for the insult it had offered by transmitting messages by the clerk, instead of a committee; limited supplies granted to the period of one year; and inhibited the treasurer from paying any part of the funds collected, until proper laws should be passed for that purpose. They passed a bill for the frequent election of representatives, and the governor being intimidated, gave it his assent, but it was afterward disallowed by the crown. After coming into direct collision with the governor, the assembly was ordered to attend him, when he, in an angry strain of invective and abuse, pronounced their proceedings presumptuous, daring, and unprecedented: and saying that he could not look upon them without astonishment, nor with honor suffer them to sit any longer, he declared the house dissolved.

One of our best historians* pronounces a high eulogium upon

* John Van Ness Yates.

this legislative body, declaring that its members properly appreciated their own dignity, and that neither ministerial smiles nor frowns could sway them from the path of duty. Yet the record contains one spot which the friends of rational liberty would wish to see effaced. On a question concerning a contested seat, the assembly resolved that Jews could neither vote for representatives, nor be admitted as witnesses.

The election showed that the assembly had not misunderstood the feelings or sentiments of their constituents; and the new legislature firmly adhered to the principles which had been asserted. The maintenance of those principles rendered the executive dependent upon the legislature, and thus an important step was taken toward that independence which was afterward established.

The institution of domestic slavery now began to produce its fruits of suspicion and fear. By the laws regulating that institution, every colored person was a slave, and a slave could not be a witness against a free man. The persons thus held in servitude were punishable by their masters to any extent short of privation of life or limb. The disabilities of the slave were hereditary, and the race was therefore plunged into hopeless bondage and degradation. This oppression was supposed to be justified by the assumption, that those thus injured were of "the accursed seed of Cain." Several fires having occurred in 1741, the negroes were suspected as incendiaries. The magistrates, the police, and the common council, were seized with a panic which extended itself to the judges of the supreme court and throughout the city. All the members of the bar, consisting of Bradley, the attorney-general, and Alexander, Smith, Chambers, Nichols, Lodge, and Jamieson, were summoned to attend and aid the court. The lawyers, sharing the panic, volunteered to assist the public prosecutor by turns, and left the accused defenceless. Convictions were easily procured upon confessions, and the testimony of perjured informers extorted by threats and promises. The court forgot not only its own dignity, but the claims of justice and humanity. Four white persons, implicated in the supposed crimes, were executed. Eleven negroes were burned at the stake, eighteen were hanged, and fifty were transported and sold into foreign slavery.

The legislature in 1741 manifested a disposition to inquire into

the defects of the jurisprudence of the colony, and Daniel Horsmanden, who was then a judge of the supreme court, was authorized to collect and revise the laws in force, with notes and references; but that duty was not performed. It is asserted that the incoveniences resulting from his continuance in office, in advanced age and under growing infirmities, was the cause of the adoption of a principle still continued in our constitution, which disqualifies a judge on his attaining the age of sixty years*—a fact exceedingly interesting, as an illustration of the permanent influence which occasional circumstances may exert upon the legislation of a country.

In 1743, a law was passed for the relief of imprisoned debtors, and legacies were made recoverable in courts of common law. The practice of instituting prosecutions by *information*, which had been constantly regarded with jealousy since the trial of Zenger, gave rise to a bill for regulating such proceedings, but it was lost in the council through the influence of the lieutenant-governor. The ministry, distrusting the loyalty of a people so bold in the assertion of their rights, availed themselves of the alarm excited by the renewal of hostilities by France, with a view to place the pretender upon the throne, and required that a law should be passed, obliging the inhabitants of the province to take the oaths prescribed by parliament, for the security of the government and of the protestant religion. The assembly complied, after a spirited debate, in which the measure was resisted, because it seemed to impeach the loyalty of the province. The collisions between the ministry and the governor on one side, and the assembly on the other, continued without abatement. The governor, in 1749, renewed his demand for provision for the support of government for five years, and when the house refused, threatened the members with punishment, declaring that the crown could abridge their rights and privileges at pleasure. The assembly resolved that the governor's conduct was arbitrary and illegal, and a violation of their privileges.

In the instructions to Governor Osborne, in 1753, the ministry persisted in all the obnoxious demands which had been so long and uncompromisingly opposed by the assembly. The year 1754 was rendered memorable by the assemblage of the congress of deputies of the several American colonies, at Albany, to devise

* Abolished in 1846.—*Ed.*

a plan of union for common defence against the French and Indians. A project for a confederacy of the American colonies was prepared by Franklin. It embraced Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina; and proposed that each colony should retain its constitution, but that a general government should be established, with a president-general and council, to be appointed by the crown, and a grand council to be composed of representatives elected by the assemblies of the several states. The apportionment of members in that council is worthy of notice, because it shows the relative population and strength of the colonies at that period, varying essentially from the relative importance of the several states at the present time. Massachusetts was allowed seven representatives, New Hampshire two, Connecticut five, Rhode Island two, New York four, New Jersey three, Pennsylvania six, Maryland four, Virginia seven, North Carolina four, South Carolina four. The powerful machine thus projected for the support of the British throne, was twenty-one years afterward successfully put in motion to resist the encroachments of the British parliament; and it is not impossible that the adaptation of the plan to such a purpose, induced its rejection by the ministry, while the fear that it would strengthen the royal power caused it to be disapproved with equal promptness by the colonial assemblies.*

The passage of the stamp-act in 1765, which levied imposts in violation of a principle which all the American colonies had asserted, and thus far perseveringly maintained, and which provided for the execution of that impolitic measure by means and agents equally obnoxious, produced universal exasperation.

The act was printed and circulated in the streets of New York, with the title of "The Folly of England and the Ruin of America." A congress of deputies met in New York in October, 1765. New York was represented by Robert R. Livingston, John Cruger, Philip Livingston, William Bayard, and Leonard Lispenard. Cadwallader Colden, then lieutenant-governor, announced that the congress was unconstitutional, unprecedented, and unlawful, and he should give it no countenance. The congress solemnly protested that the people of the colonies were entitled to all the

* Dunlap.

rights of Englishmen; that no taxes could be imposed upon them without their consent; that their only legislative representatives were the provincial assemblies; and that the stamp-act, passed by the parliament of Great Britain, without the consent of those assemblies, was subversive of the rights and liberties of the people. The manifestations of popular indignation and resistance obliged the lieutenant-governor, Colden, to surrender the stamps which had been sent over for the use of the province—a concession which he made under protest, and to avert the calamities of a civil war. The law was successfully resisted, and in the subsequent year was repealed; but the moment of the final controversy was now hastening, and every effort of the ministry to maintain the power of the crown, served only to inflame a spirit of resistance, which had become general throughout the colonies.

The press was brought into political action, and prepared the public mind for a conflict of arms. The royal cause was sustained by Dr. Miles Cooper, the president of the college, and other clergymen of the Episcopal church. William Livingston, afterward governor of New Jersey, Gouverneur Morris, and others, defended the rights of the colonies. John Jay, having received an accomplished education, and having already acquired high rank at the bar, engaged on the same side; and, at the same time, John Morin Scott and Alexander Hamilton, who then was only seventeen years of age, entered the controversy. On the 25th of July, 1774, Philip Livingston, John Alsop, Isaac Low, James Duane, and John Jay, were appointed delegates to the first congress at Philadelphia. That body, in adopting a declaration of the rights of the people of the colonies, laid the foundations of independence and union. The committee who reported that paper, were Richard Henry Lee, of Virginia, and Messrs. Jay and Livingston of New York. An address was also made to the people of Great Britain. This state paper, which was prepared by Mr. Jay, was distinguished alike for its elevated tone and glowing language.

The general assembly of New York was convened in 1775. Being in the interest of the crown, that body refused a vote of thanks to the representatives of the colony in the general congress, and, by this and other manifestations of pusillanimity, so effectually forfeited all claims to the public confidence, that the New York committee of safety recommended that a provincial

congress should be elected by the people. Mr. Jay, being a member of this committee, and now a third time elected a delegate to the general congress, surrendered himself to the public service. He distinguished himself, and aided the popular cause by preparing an address to the people of Canada, invoking their neutrality; and afterward by a similar address, which was made by Congress to their fellow-subjects in Jamaica and Ireland. These papers were among the most effective which were issued by Congress; and which at once inspired the people of the colonies with confidence and zeal in their cause, and secured the respect of a large portion of the people of the mother-country.

The inhabitants of Queens county, on Long Island, had refused to appoint delegates to the provincial congress, and the subject arrested the attention of the General Congress. Mr. Jay, from a committee, submitted a report, with a bold and denunciatory preamble: "Whereas a majority of the inhabitants of Queens county, in the colony of New York, being incapable of resolving to live and die freemen, and being more disposed to quit their liberties than to part with a little proportion of their property, necessary to defend them, have deserted the American cause by refusing to send deputies as usual to the convention of that colony, and evinced, by a public declaration, an unmanly design of remaining inactive spectators of the present contest, vainly flattering themselves, perhaps, that should Providence declare for our enemies, they may purchase their favor and mercy at an easy rate; and, on the other hand, if the war should terminate in favor of America, that then they may enjoy, without expense of blood or treasure, all the blessings resulting from that liberty, which they in the day of trial had abandoned, and in the defence of which many of their more virtuous neighbors and countrymen had nobly died; and it being reasonable that those who refuse to defend their country should be excluded from its protection, and be prevented from doing it an injury," &c. The committee, therefore, recommended measures for putting the inhabitants of Queens county, who had voted against sending deputies to the provincial congress, out of the protection of the united colonies, and to disarm and subject the disaffected. The paper is a happy illustration of the spirit of the times, and of the talents of its author. At the close of the year 1775, when all of the southern portion of New York was in the hands of the enemy, the Amer-

ican army had retired from Westchester, baffled in its attempt in Canada, and General Washington was retreating through New Jersey, and the British commander was offering protection and rewards to the timid and irresolute, the pen of Mr. Jay was again called into requisition by the Congress of the United States, and was effectually exercised in a glowing address to their constituents; a document of such extraordinary power, that, if it stood alone, it would be an ample vindication of the firmness and patriotism of Congress. To such labors Mr. Jay added the preparation of the first constitution of the state of New York, which was adopted by the convention in 1777. This work, although it was forty-four years afterward superseded by another, correcting some defects disclosed in its operation, nevertheless asserted the chief popular rights, defined the relative powers of the various departments, and established the great principles of fundamental law as they yet exist, and will continue for all time to come.

It is time, however, to notice other actors who had come upon the stage. Philip Schuyler had secured to himself a thorough knowledge of the French language, then a rare accomplishment in this country, together with varied learning and extensive knowledge of the exact sciences. His favorite studies were finance, military engineering, and political economy. He had been distinguished in the provincial military service, and he first drew to himself the attention of his fellow-citizens, by his efforts in the general assembly in 1775, in the debates which brought the struggle between the ministerial and whig parties to a crisis. George Clinton, afterward governor, and Nathaniel Woodhull, afterward president of the provincial congress, were associated with Schuyler in these debates, which involved not only the immediate causes of irritation, but also the fundamental principles of the British constitution, and of free representative government. To the spirit manifested on that occasion by the indomitable minority, may be attributed in a great measure the acquiescence of the people in the bold recommendation for discarding the general assembly and instituting a new provincial legislature. Thus was the boundary passed, a constitution subverted, and the colony, with her sister provinces, arrayed in open defiance of the British government.

On the 9th of July, 1776, the provincial congress ratified the Declaration of Independence, and immediately assumed the title

of the convention of the state of New York. A committee was appointed to prepare a constitution, and that task was intrusted to John Jay, James Duane, Gouverneur Morris, and Robert R. Livingston. The draught of the constitution was in the handwriting of Mr. Jay and was submitted by Mr. Duane; and those individuals, together with Gouverneur Morris and Robert R. Livingston, who were also eminent lawyers, gave to that instrument the form in which it was adopted by the convention. Upon promulgating the constitution, the convention appointed a council of safety, which was invested with all the powers requisite for the security and preservation of the state, until a governor and legislature should be duly chosen and qualified to act under the new constition. This council, thus invested with absolute power, nobly justified the confidence reposed in them by the convention, by the wisdom, firmness, energy, and moderation, which they displayed in that trying emergency. Their names were John Morin Scott, Robert R. Livingston, Christopher Tappen, Abraham Yates, junior, Gouverneur Morris, Zephaniah Platt, John Jay, Charles De Witt, Robert Harper, Jacob Cuyler, Thomas Tredwell, Pierre Van Cortlandt, Matthew Cantine, John Sloss Hobart, and Jonathan B. Tompkins.

George Clinton was elected governor, John Jay appointed chief-justice, and Robert R. Livingston chancellor, under the new constitution. Philip Schuyler was appointed, in 1775, a representative in the Congress of the United States, and soon afterward major-general in the continental army. Mr. Jay subsequently filled the trusts of chief-justice of the United States, governor of New York and minister to the court of St. James. The name of Schuyler, although eclipsed during the revolutionary contest by personal and partisan jealousies, is nevertheless destined to maintain a place in the military annals of that period, second only to his, who is without a compeer in the homage of mankind. Woodhull fell a martyr in battle, sustaining the cause he had so ably maintained in the councils of the state. The genius of Gouverneur Morris, as well as that of Robert R. Livingston, will be found impressed upon many a page, in which we are hereafter to record the social, moral, and physical improvement of the state.

If to Massachusetts belongs the honor of cradling the Revolution, and to Virginia that of having given birth to the author of

the Declaration of Independence, and to the immortal chief who conducted the armies until its establishment, New York may, with equal justice, lay claim to the honor of having produced the statesman who chiefly secured the adoption of the federal constitution, and put it into effectual and successful operation. Alexander Hamilton, while yet a student in Columbia College, defended the republican cause in a series of essays, marked with so much ability and wisdom, that they were attributed to the pen of John Jay, who was then in the foreground in the councils of the state and the Union. Of the talents exhibited by Hamilton, as a confidential aid-de-camp of the commander-in-chief, we have not room to speak. In 1782, the ardent yet discreet Hamilton, became a member of the bar, and was elected a delegate to Congress, and acquired a commanding influence in that body. In 1786, he was member of the legislature of this state, and in the same year was a delegate to the convention which formed the constitution of the United States. Disappointed in procuring the adoption of what he deemed essential features of such an instrument, he nevertheless acquiesced in the decisions of the convention, and gave his free and unreserved assent to the constitution as it was promulgated by that august body. It was a mighty task to prepare a form of government which should guaranty the union, the liberties, and the happiness of a rising people; but a greater task remained. That people consisted of thirteen states, each of which had a separate constitution, local interests, and peculiar institutions, and was jealous of everything which might, in the remotest degree, tend to diminish power and influence, deemed essential to popular liberty and self-preservation. Whatever rendered the constitution acceptable to one or several states, awakened the jealousies of others, while, throughout the whole Union, the people divided into two angry and violent parties; the one apprehending that the federal power would be too weak to preserve the national security—the other, that that power would be too oppressive, and result in despotism, even more unendurable than that which had been so recently overthrown. To reconcile these conflicting opinions and interests, and procure the assent of the states to the constitution which had been proposed, and when adopted to carry it into successful operation, under circumstances the most disheartening, was the task assumed by Hamilton. He addressed

to the people a series of letters under the signature of the Federalist, in which he received important aid and co-operation from James Madison and John Jay. In this admirable work he expounded the principle of the constitution, and pointed out its application in all the various exigencies of peace and war, and of domestic prosperity and discontent; and such were the sagacity and forecast thus manifested, that the Federalist still remains, after a lapse of half a century, a great and authoritative commentary on the federal compact. These labors were followed by others equally effective in the convention of this state, which resulted in the acceptance of the constitution of the United States by that body: efforts in which he was ably seconded by Robert R. Livingston, while that measure was resisted with great ability by Melancthon Smith and his associates.

The people of the United States were not unaware of the difficulties which would attend the organization of the new government, and, therefore, with the greatest unanimity, called Washington from his retirement to preside in the public council in that emergency. While wisdom and energy were required in every department, that, which was to be intrusted with the subjects of finance, was surrounded with the worst embarrassments. The federal government and the state governments were alike hopelessly encumbered with debts, and the credit of both was prostrate. There was, as yet, no plan of revenue, and no currency. The country was filled with imported fabrics, while every department of domestic industry was deranged. In what manner could a sufficient revenue be provided for the necessary expenditures of the government in so trying an emergency, and how was the exhausted credit of the country to be restored, and its prosperity to be renewed and invigorated? These were among the leading questions, to be settled by the first Congress that assembled after the adoption of the constitution; and they involved controversies in political economy, rendered still more difficult by conflicting interests and discordant views concerning the fiscal principles and powers of the government. Washington, with that sagacity which never erred, had assigned these subjects to the consideration of Alexander Hamilton the first secretary of the treasury.

The work of Adam Smith, on the Wealth of Nations, published the year before the Revolution, though very deficient in me-

thodical arrangement, and on many points extremely discursive, was, nevertheless, justly considered as constituting the foundation of a system of political economy, and establishing landmarks for the guidance of subsequent investigation.

Hamilton discussed, with surpassing ability, the fiscal policy of the government in four reports. The first of which was on the public credit; the second, on a national bank; the third, upon manufactures; and the fourth, on the establishment of a mint. To point out the proper means for paying the public debts of the Union and of the states was the object of the first report. He recommended that no discrimination should be made between the creditors of the United States and those of the several members of the confederacy, and that the new system of finance should include the payment of all by the general government.

The report on a national bank commenced with the proposition that such an institution would be of primary importance, for a prosperous administration of the finances, and of eminent utility, connected with operations for the support of public credit, and maintained the expediency of establishing such an institution, in a train of powerful arguments, derived from a view of the benefits which, it was alleged, resulted to trade and industry from public banks, as well as those affecting credit, which, as was supposed, such an institution would afford in the peculiar circumstances of the country. The whole subject of banking, the uses and relation of specie and circulating notes, their respective advantages and inconveniences as a currency, the arguments in favor of banks, and the objections to which they were obnoxious, were all thoroughly discussed. The president had required written opinions from the members of the cabinet, concerning the constitutionality of a bank. Mr. Jefferson, secretary of state, and Mr. Randolph, attorney-general, in their opinions denied the power of Congress to establish such an institution. Hamilton's report may be considered a reply to these opinions, and whatever may be the merits of that still vexed question, this paper is universally conceded to be an able vindication of the side of the argument which the author adopted.

In the report on manufactures, Hamilton reviewed at length the positions assumed by Adam Smith, "that individuals were better judges, than statesmen or lawgivers could be, of the

species of industry which their capital could employ to the greatest advantage; that as every individual was constantly exerting himself to find out the most advantageous use for his capital, the study of his own advantage would necessarily lead him to prefer that employment which must be most beneficial to the general society. That every individual, who had embarked his capital in the support of domestic industry, naturally aimed so to direct it that it might yield the greatest possible profit; that what was prudent and economical in a private family could scarcely be otherwise in that of a great country; that if a foreign country could furnish us with a commodity at a cheaper rate than we could manufacture it, it would be for our interest to purchase it with some part of the produce of our own industry, employed in a more profitable manner than in making the commodities referred to; and that to give the monopoly of home market to the produce of domestic industry in any art or manufacture, would be giving an artificial direction to private capital that must be either useless or injurious." From which, and similar positions of a like nature, Smith had drawn the conclusion that the application of private capital and labor ought to be as little as possible controlled or restrained by regulations of government. Hamilton discussed these doctrines with great ability. He admitted that if the reason, by which the principle of free trade was defended, had more generally governed the conduct of nations, they might have advanced with greater rapidity to prosperity and greatness than they had done by the pursuits of maxims too widely different. But he insisted that most theories had very many exceptions, and that very cogent reasons might be urged against the hypothesis that manufactures would grow up without the aid of government, "as soon and as fast as the natural state of things and the interest of the community may require." He showed as objections to its truth, the influence of habit, the fear of failure in untried enterprise, the difficulties inseparable from competition with those who have attained perfection in the business to be undertaken, and the bounties, premiums, and artificial encouragements with which foreign governments supported their own subjects, in divisions of industry in which they might be rivalled or surpassed. He also examined the hypothesis of the superior productiveness of agriculture, and maintained with elaborate reasoning that the general arguments brought to

establish it were not satisfactory. He discussed the relative advantages of foreign and domestic markets, and the circumstances peculiar to the condition of the country, which, in his judgment, rendered the interposition of the government for the protection of national industry expedient and necessary. On all these questions the report covered the whole ground of controversy, and so full and forcible was its argument, that it is now referred to as authority, and as a text-book by those who maintain the necessity of protecting American industry.

General Hamilton's report on the establishment of a mint discussed, 1st, What ought to be the money unit of the United States; 2d, The proper proportion between gold and silver; 3d, The composition and proportion of alloy in each metal; 4th, How the expense of coinage should be defrayed; 5th, The number, denomination, sizes, and devices of the coins; and 6th, Whether foreign coins should be permitted to be current, and at what weight.

These reports of General Hamilton determined the fiscal policy of the United States. The federal government funded its own debt and those of the states. A bank was established, and throughout its career, rendered to the government and to the commerce of the country the services contemplated. A tariff for revenue, incorporated upon the principle of protecting domestic industry was established, and a mint was founded which furnished a sufficient supply of the precious metals for the proper coinage of the government. The credit of the Union and of the states was speedily renewed and invigorated, and the public debt incurred in the Revolutionary war, largely increased in the war of 1812, was finally paid off and discharged during the presidency of General Jackson; and the universal prosperity consequent upon the measures thus adopted, is now a subject of history.

The legislature of New York, as soon as the Revolutionary conflict had ended, devoted itself to the duty of modifying the jurisprudence and civil polity of the state, in harmony with the principles of the constitution and the beneficent spirit of the age. Peter Van Schaack, an eminent lawyer, had been directed, in 1774, to revise the statute laws of the province, a task which he performed with ability and accuracy.

It would be impossible, on this occasion, to review in detail the changes of municipal law which have been made; changes

so great as to have created a code as peculiarly distinct and national as the civil law or the common law of England. The entire criminal code has been revised and ameliorated, by the substitution of a humane penitentiary system, with moral discipline and religious instruction established in lieu of a system which denounced the penalty of death for almost every form of municipal offence; and the new system has been recently improved by establishing a separate institution for the reformation of female offenders, under the exclusive care of persons of their own sex. The relations of debtor and creditor have been modified, and while frauds and dishonesty have been subjected to rightful punishment, the honest but unfortunate debtor is relieved from oppression. The relations of landlord and tenant have been divested of every remnant of feudal service, and conformed to the equal spirit of republican institutions. The laws concerning insane persons, copied from an English statute, passed in the reign of Queen Anne, by which those unhappy persons who were bereft of reason were classed with "vagrants and disorderly persons," and required to be imprisoned to protect society against their violence, have been modified; and an institution has been erected in which they are cured of their mental and physical maladies, with all the aids which modern science has devised in that interesting department of the healing art.

Preferences of primogeniture and of sex in regard to descents have been abolished, and judicious precautions have been adopted to prevent the too great accumulation and too long duration of estates. The rights of married women have been enlarged. The alienation of land has been relieved from embarrassments and obstructions; and the general registration of deeds and incumbrances has resulted in promoting the convenience of acquiring and the disposing of real estate. Joint tenancies have been changed into tenancies in common. Lands mortgaged for the payment of debts have been placed at the disposal of the mortgagee and executor. Obstructions in the way of executions upon property, have been removed. Technicalities in conveyances have been dispensed with. The intricate statutes in regard to uses and trusts have been simplified. The system of pleadings and practice in courts of law and equity, has been rendered less tedious and expensive.

Samuel Jones was distinguished as the prominent leader in these improvements in jurisprudence, and especially as the author of the statute for the amendment of the law and the better advancement of justice, and the laws relating to real estate. But there is one feature in this progress of improvement too prominent to be passed without more special notice. The first public evidence that justice was awakened in regard to the bondage of the African race, was manifested in a law passed during the Revolution, by which slaves were invited to enlist in the provincial forces, with the consent of their masters, under a promise of emancipation after the term of their military service. When the constitution of the United States was formed, enlightened men throughout the Union could not close their eyes against the evils which must obviously flow from guarantying, in that instrument, the perpetual maintenance of slavery; and while a portion of the states refused to enter the compact, except upon receiving concessions which they deemed sufficient to secure themselves against an early abolition of slavery by the power of the general government, this state, and others, refused to assent to a phraseology which could be construed to forbid emancipation; and all agreed to confer upon Congress the right to inhibit the importation of slaves after the year 1808. The right of suffrage, under the first constitution of this state, was granted to free citizens, without distinction on the ground of color or descent. Mr. Jay was absent when the constitution prepared by him was adopted by the convention. In a letter addressed to two members of that body soon afterward, Mr. Jay, after objecting to some features of the constitution, said, "The other parts I approve, and only regret that like a harvest cut before it was all ripe, some of the grains have shrunk. I should have been for a clause against the continuance of domestic slavery." In 1788, the legislature passed an act which struck at the foreign slave-trade, but not at the existence of the institution of slavery itself. This act declared "that if any person should sell, within this state, any negro or other person, who had been imported or brought into the state after the first of June, 1785, such seller should be deemed guilty of a public offence, and the person so imported or sold should be reprieved." Having been elected to the office of governor, in 1795, John Jay diligently prosecuted his philanthropic purpose of procuring the abolition of slavery.

Unwilling to expose that measure to the spirit of party, he did not recommend it in his first speech, but it was introduced by one of his friends into the house of assembly. After a protracted discussion, the bill was defeated, and a resolution was passed "that it would be unjust to deprive any citizen of his property without a reasonable pecuniary compensation to be rendered at the expense of the state." The effort was renewed in 1797, but was successfully resisted, and no vote was taken on the merits of the question. John Jay had long before declared, "that were he a member of the legislature, he would introduce a bill for the gradual abolition of slavery, and would never desist from urging its passage until it became a law, or he ceased to be a member." True to the principle thus avowed, he, in 1798, caused a bill to be introduced for the fourth, and, happily, for the last time. It was passed by majorities of ten in the senate and twenty-six in the assembly, and may be justly regarded as the crowning event of John Jay's administration. Slavery, however, still lingered, under some reservations contained in the law, until in March, 1817, during the administration of Daniel D. Tompkins, the annihilation of this form of bondage was effectually secured by an act emancipating "every" negro, mulatto, or mustee, within the state, born before the Fourth of July, 1799. The new constitution of the state, adopted in 1821, took a retrograde step in requiring of colored persons a property qualification of two hundred and fifty dollars as a condition of suffrage, while white citizens were allowed to vote without any such possessions.* In 1840, with a view to the better protection of persons unlawfully claimed by virtue of the constitution of the United States as fugitives from service in other states, the legislature extended to those claimed as such fugitives the privilege of a jury to try the question of servitude. In 1841, a law, which until then had been in force, permitting persons from other states, travelling within this state, to exercise rights as masters over slaves attending them, for a period not exceeding nine months, was repealed: and about the same time the executive authority decided that the state could not surrender, as a fugitive from justice, a person charged with stealing a slave as property; because this state could not admit that by the force of any human consti-

* The same undemocratic feature is found in the constitution of 1846.—*Ed.*

tution or laws, one human being could become the property of another.*

Robert R. Livingston filled the office of chancellor from 1777 to 1801; John Lansing, junior, from 1801 to 1814; James Kent, from the latter year to 1823; Nathan Sandford, from that period to 1826, when Samuel Jones was appointed, who, in 1828, gave place to Reuben H. Walworth, the present chancellor.

The office of chief justice was, in 1777, assigned to John Jay, who was succeeded in 1779 by Richard Morris, who performed its duties until 1790, when Robert Yates was appointed. His successor was John Lansing, junior, who held the office from 1798 to 1801, when the office devolved upon Morgan Lewis, who was, in 1804, succeeded by James Kent, who being appointed chancellor in 1814, resigned the office of chief justice, and was succeeded by Smith Thompson, afterward secretary of the navy, and now one of the judges of the supreme court of the United States. Ambrose Spencer was appointed chief justice in 1819, and in 1823 was succeeded by John Savage, who resigned in 1837, and Samuel Nelson, the present chief justice, was thereupon appointed. The following persons have filled the offices of justices of the supreme court, and were appointed in the order in which they are named: Robert Yates, John Sloss Hobart, John Lansing, junior, Morgan Lewis, Egbert Benson, James Kent, John Cozine, Jacob Radcliff, Brockholst Livingston, Smith Thompson, Ambrose Spencer, Daniel D. Tompkins, William W. Van Ness, Joseph C. Yates, Jonas Platt, John Woodworth, Jacob Sutherland, William L. Marcy, Samuel Nelson, Greene C. Bronson, and Esek Cowen.

The office of attorney-general has successively devolved on Egbert Benson, Richard Varick, Aaron Burr, Morgan Lewis, Nathaniel Lawrence, Josiah Ogden Hoffman, Ambrose Spencer, John Woodworth, Matthias B. Hildreth, Abraham Van Vechten, Martin Van Buren, Thomas J. Oakley, Samuel A. Talcott, Greene C. Bronson, Samuel Beardsley, Willis Hall, and George P. Barker.

While the legislature was busily engaged in modifying the municipal law, the higher courts were not less assiduous in expounding the new statutes. But the materials for writing the

* Vide "Virginia Controversy," in subsequent pages of this volume.—*Ed.*

judicial history of the state previously to 1805, are very scanty, and are chiefly traditionary. The practice in the supreme court was modeled after that of the king's bench in England, and its complexity and uncertainty rendered it difficult of attainment. Not only was the practice in the court of chancery more mysterious, but the principles of judicial equity, and the rules controlling their application, were to be learned by the few only who at that day had access to expensive English works. The science of the law at that early period was less understood than now, while its professors were held in high veneration, as the priests of mysteries too profound to be explored by common minds. In 1794, "A Treatise on the Practice of the Supreme Court of Judicature of the State of New York, in Civil Actions," was published "by William Wyche, of the Honorable Law Society of Grey's Inn, London, and citizen of the United States of America," with the motto "*Lex mundi harmonia.*" This little work was well executed, and there are yet some among us who found it useful in relieving them from the difficulties of separating what was applicable here from the intricate forms of practice in the English courts.

William Coleman and George Caines, in 1794, commenced collecting reports of cases of practice in the supreme court, and published the results in 1805. George Caines also gathered notices of important cases adjudicated in the court for the correction of errors. The same author, in 1808, published a treatise on the practice of the supreme court. The occasional reports thus published, prepared the way for more regular and careful reports by William Johnson, of the decisions made in the three higher tribunals of the state. Those of the supreme court, and the court for the correction of errors, now fill fifty volumes, of which twenty were published by Mr. Johnson, nine by Esek Cowen, twenty by John L. Wendell, and one by Mr. Hill, the present reporter.

Chancellor Kent introduced the system of reporting in the court of chancery, and we have now fifteen volumes of such reports, seven of which were prepared by William Johnson, one by Samuel Miles Hopkins, and seven by Alonzo C. Paige. These various reports contain a large mass of adjudications on constitutional law and statutory enactments and the application of the common law, and principles of equity, to the multifarious

questions of right and duty arising in a rapidly-increasing community; and are held in the highest respect by the people of this state, and deemed a necessary part of the library of every lawyer in the United States. The talents and learning of Judge Benson have always been held in high respect; but the honor of introducing method and order into our jurisprudence, and elucidating its principles and their application, rests chiefly with James Kent and Ambrose Spencer, and their associates on the bench of the supreme court. Since their retirement from the judiciary, the responsibilities of judges have vastly increased in regard to the number of causes to be heard and adjudicated; and although generally it is hazardous to speak of contemporaries, yet we may safely affirm that the courts have continued to maintain an eminent character for profound and varied learning.

The names of some of our lawyers have been already mentioned. We may add those of Richard Harrison, Richard Varick, Thomas Addis Emmet, John Wells, John V. Henry, Elisha Williams, Abraham Van Vechten, Henry R. Storrs, Samuel Miles Hopkins, and Thomas R. Gold, who are deeply lamented not only as eminent lawyers, but as useful and honored citizens. Our contemporaries will, perhaps allow us to add the names of some who, although living, have withdrawn from the contests of the forum, and whose established fame is now the property of the bar of the state, such as Samuel Jones, Thomas J. Oakley, Martin Van Buren, John Duer, and John C. Spencer.

Chancellor Kent retired from the arduous and honorable duties of the court of chancery, unwearied by judicial labors and unimpaired by age, although he had reached the climacteric at which the constitution declares an incumbent disqualified. He then employed himself in reducing to a system the confused mass of American jurisprudence, as it was found in the reports of the United States tribunals, and of the courts of more than twenty of the states. This great work he accomplished so successfully, that his commentaries have superseded, as an elementary book, all other compilations, and are received with the respect due to authority throughout the Union. Our law libraries are chiefly made up of English works, reprinted with notes of American decisions and statutes. There have been few original publications on elementary law, and the list of writers in the legal profession is by no means extensive. We have a profound and philosophical

Essay on the Law of Contracts, by Gulian G. Verplanck, who has also distinguished himself by many elaborate opinions, delivered while he was a senator, in the court of errors; a Treatise on the Constitution of the United States, by Alfred Conkling; an Essay on New Trials, by David Graham, and a Treatise on the Practice of the Supreme Court, by David Graham, junior; a Manual of Law for the Use of Business Men, by Amos Dean; "The Office and Duties of Masters in Chancery," and a Treatise on the Practice in Chancery, by Murray Hoffman; Blake's Chancery Practice; Dunlap's Practice; and a work on the same subject, by Paine & Duer.

Leaving this imperfect notice of the bar and its learning, and returning to the subject of political science, we may mention "A Sketch of the Finances of the United States, by Albert Gallatin," published in 1796, which, on account of the general views it contains in respect to revenue and taxation, deserves to be classed among discussions in the science of political economy. The sketch referred to contained a very comprehensive and lucid view of the financial system of the United States, as put in operation after the organization of the government under the constitution. It did not merely set forth the actual condition of the finances, but was interspersed with much clear and forcible reasoning in relation to the wisdom of particular features of the revenue system, as it then existed. The subjects of taxation and public debt and their effects, the different species of revenue, and the expenditures of the government, were discussed by Mr. Gallatin with a degree of ability and acuteness, which indicated a familiar acquaintance with financial questions, and strong powers of reasoning. The work contained pointed objections to some of the early measures of the federal government, which were recommended by General Hamilton, and particularly the assumption of the debts of the states by the general government; but its tone throughout was calm, dignified, and elevated.

From its bearing upon one of the great questions of the day — viz., the extent to which protection to the manufacturing industry of the United States was necessary — the following position assumed by Mr. Gallatin is deemed worthy of notice: "As every further increase of population in many of the states diminishes the relative quantity of land and of produce raised, and promotes the establishment of manufactures; our exports of raw materials,

our importations of those articles we can manufacture, and the revenue raised upon such articles, although all of them gradually augmenting, will, unless favored by accidental causes, increase in a ratio less than our population." He, however, maintained that, for the purposes of revenue, the impost should be the principal reliance of the country; and that when this was carried as far as prudence would dictate, the great source of taxes upon consumption must be considered as nearly exhausted, and that the other great branch of revenue, lands, must be made to contribute by direct taxation. On the subject of public debt and its effects, Mr. Gallatin's observations are able and philosophical.

In the year 1826, a discourse was delivered at Schenectady, before the literary societies of Union College, by Samuel Young, Esq., on the subject of political economy. It traced the rise and progress of the science through its various phases, from the commercial or mercantile theory, to the more orderly and rational system introduced by Adam Smith. The discourse was written with purity and beauty of language, and illustrated with great clearness the received principles of the science. Mr. Young pointed out the evil effects of a public debt upon the community, and the indispensable duty of governments to practise the most rigid frugality and economy. He objected to usury laws, as tending to promote the very evil they were designed to eradicate, and to eleemosynary establishments, maintained at the public expense, as encouragements to pauperism. The general scope of Colonel Young's address was in harmony with the principles stated by Adam Smith, though he conceded that, in the incipient stages of a domestic manufacture, it might need and properly receive the aid of government, being left, as soon as it had passed the precarious period of infancy, to that free competition and that keen-sighted self-interest, which he believed to be the best regulators of human industry.

An Essay on Credit, Currency, and Banking, by Eleazer Lord, published in 1834; a Treatise on Political Economy, by the Rev. Alonzo Potter; and Suggestions on the Banks and the Currency, published within the last year, by Albert Gallatin, deserve a place among the writings of citizens of New York, in the department of political economy. These several works discuss questions which yet remain subjects of political controversy, and present the various arguments by which many conflicting opin-

ions of the day are supported; but all are distinguished by the spirit of candid inquiry, or honest conviction.*

The convention which assembled in 1821, to revise the constitution of the state, presented an occasion when many of the fundamental principles of the science of government before regarded as settled, were subjected to a close and searching examination. Rufus King, who had been long distinguished as a senator from this state in the senate of the United States, and as a representative of the United States at the court of St. James, expressed in an opening speech what were probably the prevalent feelings of the convention. "Although," said he, "I fully concur in the fitness and expediency of this convention, and although I am fully of opinion that the change of circumstances and political relations in our country have imperiously required the interposition of the people to revise the constitution, yet it is my hope that the convention may proceed with great caution and moderation. "Not only," said he, "are the great principles of free government which arise from, and are sustained by, the intelligence and virtue of the people, denied by the great nations of the Old World, but a contrary and most slavish doctrine is proclaimed and enforced by them; a doctrine which falsely assumes that a select portion of mankind only are set apart by Providence, and made solely responsible for the government of mankind. In contradiction to this theory, it is our bounden duty to make it manifest to all men, that a free people are capable of self-government; that they can make, and abate, and remake their constitution; and that, at all times, our public liberties, when impaired, may be renovated, without destroying those securities which education and manners, our laws and constitutions, have provided."

The governor, chancellor, chief-justice, and justices of the supreme court, under the old constitution, were a council to revise bills which passed both houses; and bills which were returned with objections failed to become laws, unless they received the votes of two thirds of the members. A committee proposed to abolish this part of the constitution, and to confide the revising power to the executive alone, but to retain the provision declaring that bills should become laws if passed by two thirds of the

* Notes on the history of the science of political economy were received from the Honorable John A. Dix, and from Horace Greeley, Esq.

members of both houses. The proposition to abolish the council of revision was unanimously adopted. Ambrose Spencer, then chief-justice, admitted the expediency of separating the judges from the legislative power, but opposed with zeal the vesting the power in the governor, unless he was made more independent of the legislature. Peter R. Livingston strenuously labored to obtain such a modification of the proposed amendment as would permit bills, returned with objections, to pass, if they should then receive the votes of two thirds of the members *elected* to each house. Jonas Platt, then a justice of the supreme court, and member of the council of revision, very earnestly insisted upon some more effective check on hasty and improper legislation than he thought would be secured by the veto of the governor dependent (as it was supposed he would be) on the legislature. Erastus Root opposed these views and supported the amendment, declaring, with his customary energy, that he deprecated the firmness which grew out of an independence of the popular voice to oppose the popular will. Chancellor Kent expressed his apprehension "that the sober-minded people of the state would not be satisfied to see so important a column of the constitution destroyed, without having it replaced by something more efficient in its character, and useful in its operation," than the qualified veto which was proposed. James Tallmadge supported the proposition in a speech of great ability, and evincing deep research into the history of government. Daniel D. Tompkins, who was the president of the convention, approved the principle of a qualified negative upon legislation, but opposed the conferring that power upon the governor alone, and proposed to establish a council to consist of the governor, lieutenant-governor, and attorney-general and others. He also proposed to confine the governor's veto to cases in which unconstitutional laws were offered for his signature. Abraham Van Vechten, Samuel Young, and John Duer, approved the plan proposed by the committee, and it was finally adopted.

Under the former constitution, the pardoning power was vested in the governor, except in capital cases. That power was now conferred on the governor, with unlimited power to pardon in all cases except treason; after a debate in which Mr. Tompkins, Ogden Edwards, David Buel, junior, Samuel Nelson, and Peter R. Livingston, endeavored to procure an amendment, by which

the governor should be obliged to assign reasons for granting executive clemency; which proposition was opposed by Mr. Kent, Mr. Platt, and others. Mr. Root endeavored to retain the legislative power of pardon in capital cases.

The power to prorogue the legislature, conferred by the old constitution, was abolished on motion of Mr. Root; but the convention was at one time almost equally divided on the question.

The term of the executive office, under the old constitution, was three years. It was now reduced to two; thirty-one members voting in favor of continuing the term three years; sixty-one voting to fix the term at two years, and fifty-nine for reducing it to one year.

Mr. Root made an unsuccessful effort to procure a provision in the constitution, inhibiting courts from granting new trials, after two verdicts had been rendered. Mr. Duer made a like effort to incorporate in the constitution an article, declaring that indictments should not be found for what was resolved in meetings of the people, peaceably convened to consider the action of the government.

The debates in the convention disclosed the fact that there were three opinions among its members on the question of suffrage. One of them contemplated retaining the qualification of a freehold, valued at two hundred and fifty dollars, as a condition of suffrage for senators. Nineteen members voted for this proposition, viz., Messrs. Bacon, Fish, Hees, Hunter, Huntington, Jay, Jones, Platt, Rhinelander, Rose, Sanders, I. Smith, Spencer, Sylvester, Van Horne, Van Ness, Van Vechten, E. Williams, and Woods. A second opinion was favorable to universal suffrage by white persons. This opinion was supported by Mr. Root, Mr. Tompkins, Mr. Radcliff, and Mr. Young. The third opinion was conservative and midway between the extremes; and it was supported by Messrs. Van Buren, King, Sutherland, Duer, Nelson, and Nathan Williams. The result was a compromise between these conflicting opinions. But so strong was the popular sentiment in favor of universal suffrage, that the constitution was amended five years afterward, so as to dispense with all other restrictions than those which are specified in our synopsis of that instrument.* The exclusion of colored persons from suffrage, unless they had freeholds valued at two hundred and fifty dollars, was

* Hammond's History.

carried by a vote of seventy-one to thirty-three, and was based upon the ground that the African race were in a condition of hopeless degradation and ignorance. The proposition was opposed with great zeal and ability by Peter A. Jay.

One of the chief causes of discontent under the old constitution, was the manner in which the appointing power had been exercised by the council of appointment, which consisted of the governor and four senators chosen by the assembly. The council was abolished with great unanimity, many offices were rendered elective, and the power to fill others was distributed among several departments and functionaries, without important division among the members as to the principles of distribution.

It would be inconvenient to extend our notice of the convention. What has been written will perhaps be sufficient to show the spirit which prevailed in its deliberations, and to indicate some of the members who were influential in giving direction to its measures.

The year 1825 was signalized by the commencement of an undertaking which marks an era in the jurisprudence of the state. An act was passed, directing that all the existing statute laws should be revised and reduced into the form of a code, to be submitted to the legislature for review. This important duty was confided to John Duer, Benjamin F. Butler, and Henry Wheaton. Mr. Wheaton resigned the trust, and his place was filled by John C. Spencer. The gentlemen thus constituting the commission were three years engaged in performing its duties; and the legislature, on receiving their reports from time to time, passed upon the same, until in January, 1829, a perfect code was completed in four parts, as follows: Part I. Concerning the territorial limits and divisions, the civil polity, and the internal administration of the state; Part II. Concerning the acquisition, the enjoyment, and the transmission of real and personal property, the domestic relations, and other matters connected with private rights; Part III. Concerning courts and ministers of justice, and proceedings in civil cases; and Part IV. Concerning crimes and punishments, proceedings in criminal cases and prison discipline. The execution of this intricate and extensive work has been regarded, by many enlightened men, as a great advance toward the establishment of a unique and complete code. But the public mind is not now engaged in considering the practicability or expediency of such a measure.

The geographical position of the United States, and our principles of government, are alike unfavorable to conquest and military ambition. The popular mind has its action, therefore, directed toward physical improvement and the melioration of the condition of society; and in this state it has been especially engaged in improving those interior communications necessary to the maintenance of intimate political and social relations, the exchange of supplies, and provision for the public defence.

The destiny of our country seems to have been opened to the mind of Washington, with a clearness almost equal to that with which the varied career of the chosen people was revealed to their prophetic leader, on the sublime occasion when he was required to resign the trust he had so long faithfully discharged. Washington saw, that although the settlements of the United States had been clustering on the Atlantic coast during almost two centuries, yet the region, far more extensive, fertile, and salubrious, which lay beyond the proper borders of the thirteen states, would become the home of the larger portion of the American family; and that, if the natural barriers between that region and the east should remain unchanged, the west would, at no distant period, refuse political connection with the maritime states; but that, if those barriers could be surmounted by roads, and pierced by canals, connecting the inland lakes and rivers with tidewater, the wealth and population of the whole country would be vastly increased; ample provision would be made for defending every part of our extended borders; and the states, new and old, would be bound "in an indissoluble union of interest and affection." In 1783, when he had proceeded up the difficult navigation of the Mohawk to Fort Stanwix, now the site of the village of Rome, and had crossed to Wood creek, which flows into Oneida lake, and thence had descended to the sources in this state of the Susquehannah, he gave expression to this glowing thought: "Taking a contemplative and extensive view of the vast inland navigation of the United States, I could not but be struck with the immense diffusion and importance of it, and with the goodness of that Providence who has dealt his favors to us with so profuse a hand. Would to God we may have wisdom to improve them!"*

Ideas like these soon afterward engaged the attention of phil-

* Washington's letter to the Marquis of Chastellux.

osophic minds throughout the states, and it was perceived that in thus improving the inland navigation of the continent, the route for a communication between the inland waters and the sea, which should secure to itself the trade of the valley between the Allegany mountains and the Mississippi, would become an object of zealous competition.

The ocean, receiving homage through the valleys of the Mississippi and Ohio, the Potomac, the Susquehannah, the Delaware, the Hudson, and the St. Lawrence, seemed to invite through those various channels the accomplishment of the stupendous project.

By removing obstructions to the navigable flow of the continuous waters of the great lakes and of the St. Lawrence, ship navigation might be grasped six hundred miles up that river, and extended around the falls of Niagara into the waters of Lake Erie.

Citizens of Pennsylvania proposed to accomplish the same great purpose, by alternate land and water communications, surmounting the Alleganies, and employing in the transit between the Delaware and the lakes the waters of the Susquehannah and the Allegany.

The project of Maryland comprehended a diversion of trade from the Pennsylvania route at Pittsburgh, and a passage to tide water through the Potomac.

The comprehensive sagacity of Washington, as early as 1784, marked out a plan for securing to Virginia the trade of the regions in the vicinity of the lakes, by connecting the navigable waters of James river by portages, or other communications, with those of the Kenhawa, the Muskingum, and the rivers flowing into Lake Erie.*

The Mississippi offered an easy descending navigation almost from the shores of the lakes to the Gulf of Mexico. But the keys of the St. Lawrence and the Mississippi, which were the most obvious channels, were held by foreign powers, and neither their enterprise nor the condition of their colonies favored the spirit of competition which had been awakened in the new republic.

New York furnished a navigation through the Hudson, one hundred and eighty miles from tide water, and facilities for constructing a continuous channel for inland navigation across an

* Washington's letter to Governor Harrison.

almost level isthmus, which separated the great eastern lakes from the valley through which that river poured its deep and ample volume into the ocean; an isthmus, which in its various width nowhere exceeded three hundred and sixty miles.

The proximity of the great lakes to the valley of the Hudson, was understood at a very early period. Governor Burnet, in 1720, found the Six Nations receiving from French traders by the way of Montreal, merchandise which had been carried there from Albany. The friendship of the Indians naturally followed this commerce. Burnet, with a view to detach the Iroquois from the French interest, caused a fort to be erected at Oswego, and trading houses to be built at the mouth of the Oswego river, "on account of its water communications, and for the facility of transportation between the lakes and Schenectady, there being but three portages in the whole route, and two of them very short."* Dr. Cadwallader Colden, then surveyor-general of the province, addressed to Governor Burnet a memoir on the fur trade, which contained an account of the western rivers, portages, and lakes, and in which we find this very bold suggestion: "If one considers the great length of the river (the Mississippi), and its numerous branches, he must say, that by means of the river and the lakes, there is opened to his view such a scene of inland navigation as can not be paralleled in any part of the world."† Kalm and Carver, early European travellers, were struck with the same peculiar features of our territory. Sir Henry Moore, governor in 1768, in a speech to the provincial assembly, noticed the difficulties of trade with the Iroquois, in consequence of the obstructions in the navigation between Schenectady and Fort Stanwix, "occasioned by the fall of Canajoharie," under which description was undoubtedly meant the rapids at Little Falls; and he suggested that "the obstructions could easily be obviated by the use of sluices upon the plan of the great canal of Languedoc."

In 1784, Christopher Colles, of New York, submitted to the legislature proposals for removing obstructions to the navigation of the Mohawk river, so that boats of burthen might pass the same. That body mingled considerations of economy with those of enterprise in their views of the subject, and offered to secure to the projector and his associates, the perpetual profits to be derived from the navigation of the river, if improved by them. At

* Dunlap. † C. D. Colden's Memoir of N. Y. Canals.

the next session the legislature granted to Mr. Colles one hundred and twenty-five dollars, to enable him to prosecute his examination of the river. He appeared again before that body, and before the public, with a proposition to form an association to improve the inland navigation between Oswego and Albany; and the publication is said to have exhibited good foresight of the advantages which would result from the proposed connection, as well as a right understanding of the facility with which it could be accomplished. But no public action crowned his labors. The plan he proposed was thought quite too visionary. He died in obscurity, and was interred in "the burying-ground of strangers," about 1820, while the project he had promulgated was, on a vastly more extended scale, proceeding to its consummation.*

George Clinton, governor, in 1791, stated to the legislature that the frontier settlements, freed from apprehensions of danger, were rapidly increasing, and must soon yield extensive resources for profitable commerce, and that this consideration forcibly recommended the policy of continuing to facilitate the means of communication with them, as well to strengthen the bands of society, as to prevent the produce of those fertile districts from being diverted to other markets. The senate and assembly thereupon appointed a committee to inquire what obstructions in the Hudson and Mohawk rivers ought to be removed. The committee, consisting of Ezra L'Hommedieu, John Cantine, Philip Schuyler, and Alexander Webster, of the senate; James Livingston, Jonathan Brown, Jacob Delamater, John D. Coe, Zina Hitchcock, Samuel L. Mitchill, and John Smith, of the assembly, reported a bill, entitled "An Act concerning Roads and Inland Navigation," which became a law, and which directed the commissioners of the land-office to cause the country to be explored, between Fort Stanwix and Wood creek, in Herkimer county, and a similar survey to be made between the Hudson and Wood creek, in Washington county. The law further directed the commissioners to make an estimate of the expense of constructing canals on those routes. The commissioners submitted a favorable report, and Governor Clinton, at the next session, commended the subject earnestly to the consideration of the legislature. Thereupon a law was passed, entitled "An Act for Establishing and Opening Lock Navigation

* C. D. Colden's Memoirs.

within this State." The act commenced with the terse recital, "Whereas a communication by water between the southern, northern, and western parts of this state will encourage agriculture, promote commerce, and facilitate a general intercourse between the citizens;" and provided for the incorporation of two associations, the Western Inland Lock Navigation Company, and Northern Inland Lock Navigation Company. The purpose of the western company was to open a lock navigation from the Hudson river to Lake Ontario and the Seneca lake; and that of the northern company was to connect the same river with Lake Champlain. The act appointed as directors in the two companies, Philip Schuyler, Leonard Gansevoort, Jeremiah Van Rensselaer, Elkanah Watson, John Tayler, Jellis A. Fonda, William North, Goldsbrow Banyar, Daniel Hale, John Watts, Walter Livingston, Dominick Lynch, James Watson, Matthew Clarkson, Ezra L'Hommedieu, Melancthon Smith, David Gelston, Stephen Lush, Cornelius Glen, Silas Talbot, John Frey, Douw Fonda, John Sanders, Nicholas J. Roosevelt, Daniel M'Cormick, Marinus Willet, Jonathan Lawrence, Philip Van Cortlandt, James Clinton, Abraham Ten Broeck, John Williams, Stephen Van Rensselaer, Jacobus Van Schoonhoven, John Van Rensselaer, Abraham G. Lansing, Henry Quackenbush, Robert R. Livingston, Philip Livingston, James Duane, Alexander Macomb, Samuel Jones, Nicholas Low, Dirck Lefferts, William Duer, Barent Bleecker, Henry Livingston, Peter Gansevoort, Peter B. Tearce, Alexander Webster, George Ray, Thomas Tillotson, Matthew Scott, Zephaniah Platt, John Thurman, Albert Pawling, and Zina Hitchcock. Out of this array of names combining so large a representation of the talents, learning, patriotism, enterprise, political influence, and wealth of this state, it is not invidious to select that of Philip Schuyler, who, then enjoying well-earned military fame, exhibited the most untiring devotion to the physical improvement of his country. The capital stock of both the companies was $50,000, a sum so small as to show a very inadequate estimate of the difficulties of the comprehensive scheme which was then shadowed forth.

The art of constructing canals was little understood, and the topography of the country was not accurately ascertained. The enterprise of the western company fell into discredit. Many of the stockholders forfeited their shares, but a few, more perse-

vering, prosecuted the undertaking, and established an imperfect canal a little less than three miles long, with five locks, around the Little falls; a canal of one and a quarter miles, at the German flats; a canal one mile and three fourths, from the Mohawk to Wood creek, and several wooden locks on that stream. So defective were these works, that they were twice reconstructed during the short period which intervened before the commencement of the Erie canal; and yet so costly, that the company expended four hundred thousand dollars in opening a passage for loaded boats of small burthen, from Schenectady to the Oneida lake. Although steadily favored by the legislature with loans and subscriptions of stock, the company, becoming discouraged and exhausted, relinquished the design of extending their navigation to Lake Ontario. In 1798, an association was incorporated to construct a canal around the falls of Niagara, on an application by James Watson, Charles Williamson, John Williams, Effingham Embree, and their associates; but the law was not executed. The Northern Inland Lock Navigation Company, after a brief effort to procure subscriptions, abandoned the enterprise with which that association had been charged.

During several years after the western company had commenced its improvements, charters were granted to associations which proposed to remove obstructions in the St. Lawrence, the Seneca, and other rivers; but none of those companies achieved any effective improvement, except the Seneca Lock Navigation Company, which made an imperfect navigation between the Oswego river and the Cayuga and Seneca lakes.

History will assign to Gouverneur Morris the merit of first suggesting a direct and continuous communication from Lake Erie to the Hudson. In 1800, he announced this idea from the shore of the Niagara river to a friend in Europe, in the following enthusiastic language: "Hundreds of large ships will, in no distant period, bound on the billows of these inland seas. Shall I lead your astonishment to the verge of incredulity? I will. Know then that one-tenth part of the expense borne by Britain in the last campaign, would enable ships to sail from London through the Hudson river into Lake Erie. As yet we only crawl along the outer shell of our country. The interior excels the part we inhabit in soil, in climate, in everything. The proudest empire of Europe is but a bauble compared to what America may

be, must be."* The praise awarded to Gouverneur Morris must be qualified by the fact, that the scheme he conceived was that of a canal with a uniform declination, and without locks, from Lake Erie to the Hudson.† Morris communicated his project to Simeon De Witt in 1803, by whom it was made known to James Geddes in 1804. It afterward became the subject of conversation between Mr. Geddes and Jesse Hawley, and this communication is supposed to have given rise to the series of essays written by Mr. Hawley, under the signature of Hercules, in the Genesee Messenger, continued from October, 1807, until March, 1808, which first brought the public mind into familiarity with the subject.‡ These essays, written in a jail, were the grateful return, by a patriot, to a country which punished him with imprisonment for being unable to pay debts owed to another citizen, and displayed deep research, with singular vigor and comprehensiveness of thought, and traced with prophetic accuracy a large portion of the outline of the Erie canal.‖

In 1807, Albert Gallatin, then secretary of the treasury, in pursuance of a recommendation made by Thomas Jefferson, president of the United States, reported a plan for appropriating all the surplus revenues of the general government to the construction of canals and turnpike roads; and it embraced in one grand and comprehensive view, nearly without exception, all the works which have since been executed or attempted by the several states in the Union. This bold and statesmanlike, though premature, conception of that eminent citizen, will remain the greatest among the many monuments of his forecast and wisdom.

In 1808, Joshua Forman, a representative in the assembly from Onondaga county, submitted his memorable resolution. "Whereas the president of the United States did, by his message to Congress, delivered at their meeting in October last, recommend that the surplus moneys in the treasury, over and above such sums as could be applied to the extinguishment of the national debt, be appropriated to the great national project of opening canals and making turnpike roads: And whereas the

* Elkanah Watson's History of the Canals.

† Colden's Memoirs.

‡ Letter of Simeon De Witt.

‖ Jesse Hawley lived to see the Erie canal completed, and two-thirds of it reconstructed and enlarged. He died in 1841.

state of New York, holding the first commercial rank in the United States, possesses within herself the best mode of communication between the Atlantic and western waters, by means of a canal between the tide waters of the Hudson river and Lake Erie, through which the wealth and trade of that large portion of the Union, bordering on the upper lakes, would for ever flow to our great commercial emporium: And whereas the legislatures of several of our sister states have made great exertions to secure to their own states the trade of that widely-extended country west of the Allegany, under natural advantages vastly inferior to those of this state: And whereas it is highly important that those advantages should as speedily as possible be improved, both to preserve and increase the commercial and national importance of this state: Therefore, resolved, if the honorable the senate concur herein, that a joint committee be appointed to take into consideration the propriety of exploring and causing an accurate survey to be made of the most eligible and direct route for a canal, to open a communication between the tide waters of the Hudson river and Lake Erie, to the end that Congress may be enabled to appropriate such sums as may be necessary to the accomplishment of that great national object."

This resolution was adopted, and John Tayler, John Nicholas, and Jonathan Ward, on the part of the senate, and Thomas R. Gold, William W. Gilbert, Obadiah German, and James L. Hogeboom, on the part of the assembly, constituted the committee.

Mr. Gold submitted a report, not less eloquent in language than elevated in sentiment, in which he stated, that while the subject presented to the government of the United States, in removing natural barriers, and drawing together and preserving in political concord the distant parts of a widely-extended empire; an object inviting to patriotism, and interesting to its reputation, the commercial interests of this state impelled to the most strenuous efforts in promoting the same object. That in tracing the vestiges of ancient states, in whose councils munificence, guided by wisdom, presided, the remains of commercial improvement in public canals, and other undertakings, marked the advanced state of society, and attested the empire of the arts of peace; that while military achievement had shed lustre on nations, works of public utility, tending to the happiness and

welfare of society, recorded the exercise of superior virtues, and afforded better monuments of true and lasting glory; that with these sentiments the citizens of this state had witnessed with high satisfaction the conduct of the executive of the United States, in recommending an appropriation of a portion of the surplus revenue for improving, by canals, the inland navigation of the country; and that while this state would forbear to derogate from the claims of others, she felt warranted in presenting to the government of the Union, her own territory, as pre-eminently distinguished for commercial advantages.

In pursuance of a recommendation by the committee, a resolution unanimously passed both houses, directing the surveyor-general, Simeon De Witt, to cause an accurate survey to be made of the various routes proposed for the contemplated communication. But how little the magnitude of that undertaking was understood, may be inferred from the fact that the appropriation made by the resolution to defray the expenses of its execution, was limited to the sum of six hundred dollars.

There was then no civil engineer in the state. James Geddes, a land surveyor, who afterward became one of our most distinguished engineers, by the force of native genius and application in mature years, levelled and surveyed under instructions from the surveyor-general, with a view to ascertain, first, whether a canal could be made from the Oneida lake to Lake Ontario, at the mouth of Salmon creek; secondly, whether a navigation could be opened from the Oswego falls to Lake Ontario, along the Oswego river; thirdly, what was the best route for a canal from above the Falls of Niagara to Lewiston; and, fourthly, what was the most direct route, and what the practicability of a canal from Lake Erie to the Genesee river, and thence to the waters running east to the Seneca river. The topography of the country between the Seneca river and the Hudson was at that time comparatively better known. Mr. Geddes' report showed that a canal from Lake Erie to the Hudson was practicable, and could be made without serious difficulty. In 1810, on motion of Jonas Platt, of the senate, who was distinguished throughout a pure and well-spent life, by his zealous efforts to promote this great undertaking, Gouverneur Morris, De Witt Clinton, Stephen Van Rensselaer, Simeon De Witt, William North, Thomas Eddy, and Peter B. Porter, were appointed commissioners "to explore the

whole route for inland navigation from the Hudson river to Lake Ontario, and to Lake Erie." Cadwallader D. Colden, a contemporary historian, himself one of the earliest and ablest advocates of the canals, awards to Thomas Eddy the merit of having suggested this motion to Mr. Platt, and to both these gentlemen that of engaging De Witt Clinton's support, he being at that time a member of the senate.* Another writer† commemorates the efficient and enlightened exertions, at this period, of Hugh Williamson, who wrote, with reference to the contemplated improvement, papers entitled, "Observations on Navigable Canals," and also "Observations on the Means of Preserving the Commerce of New York," which were published in magazines of that day. The canal policy found, at the same time, earnest and vigorous supporters in the American and Philosophical Register, edited by Dr. David Hosack and Doctor John W. Francis.

The commissioners in March, 1811, submitted their report written by Gouverneur Morris, in which they showed the practicability and advantages of a continuous canal from Lake Erie to the Hudson, and stated their estimate of the cost at five millions of dollars, a sum which they ventured to predict would not exceed five per cent. of the value of the commodities which, within a century, would be annually transported on the proposed canal. We may pause here to remark, that the annual value of the commodities carried on the canals, instead of requiring a century to attain the sum of one hundred millions, reached that limit in twenty-five years. "By whom," added the commissioners, "shall the needful expense of the construction of the work be supported? We take the liberty of entering our feeble protest against a grant to private persons or companies. Too great a national interest is at stake. It must not become the subject of a job or a fund for speculation. Among many other objections there is one insuperable, that it would defeat the contemplated cheapness of transportation. * * * * * It remains to determine whether the canal shall be at the cost of the state or of the Union. If the state were not bound by the federal band with her sister states, she might fairly ask compensation from those who own the soil along the great lakes, for giving permission to cut the canal at their expense; or her statesmen might deem it still more advisable to make the canal at her own expense, and

* Colden's Memoir. † Dr. Hosack.

take for the use of it a transit duty, raising or lowering the impost, as circumstances might direct, for her own advantage. This might be the better course if the state stood alone; but, fortunately for the peace and happiness of all, this is not the case. We are connected by a bond which, if the prayers of good men are favorably heard, will be indissoluble. It becomes proper, therefore, to resort, for the solution of the present question, to the principles of distributive justice. That which presents itself is the trite adage, that those who participate in the benefit should contribute to the expense. The commissioners presume not to go one step further. The wisdom, as well as the justice, of the national legislature, will no doubt lead to the exercise, on their part, of prudent munificence; but the proportion, the condition, the compact, in short, must be the subject of treaty."

On the presentation of this report, De Witt Clinton introduced a bill, which became a law on the 8th of April, 1811, under the title of "An act to provide for the improvement of the internal navigation of this state." This law began with the expressive recital, that "Whereas a communication by means of a canal navigation between the great lakes and Hudson's river, will encourage agriculture, promote commerce and manufactures, facilitate a free and general intercourse between different parts of the United States, and tend to the aggrandizement and prosperity of the country, and consolidate and strengthen the Union." The act added Robert R. Livingston and Robert Fulton to the board of commissioners, and authorized them to consider all matters relating to such inland navigation, with powers to make application in behalf of the state to Congress, or to any state or territory, to co-operate and aid in the undertaking, and to ascertain whether loans could be procured on advantageous terms on the credit of the state, for the purpose of constructing the canal, and the terms on which the Western Inland Lock Navigation Company would surrender their rights and property.

Two of the commissioners, Mr. Morris and Mr. Clinton, repaired to the federal capital, and submitted the subject to the consideration of the President (Mr. Madison) and of Congress. In 1812, the commissioners reported that, although it was uncertain whether the national government would do anything, it certainly would do nothing which would afford immediate aid to the enterprise; that Tennessee had instructed her representatives

in Congress to support any laudable application for aid in relation to the canal navigation between Hudson's river and the great lakes; that New Jersey had declined to render assistance, because she had not sufficient means to complete her own plans of improvement already projected; that Connecticut, for the reasons that she could not supply money, and that she reposed full confidence in the wisdom of her representatives in Congress, deemed it inexpedient to take any measures on the subject; that Massachusetts, in language characteristic of the impartial and dignified wisdom of conscious greatness, had instructed her representatives to use their influence in favor of the application of New York; that Ohio fully approved the plan, while the youthful territory of Michigan (looking probably down the St. Lawrence, as well as across to the Hudson) was of the opinion that the proposed communication was not so desirable as a canal around the cataracts of Niagara, and another passing the falls of Oswego.

The commissioners then submitted that, having offered the canal to the national government, and that offer having virtually been declined, the state was now at liberty to consult and pursue the maxims of policy, and these seemed to demand imperatively that the canal should be made by herself, and for her own account, as soon as the circumstances would permit; and that, whether the subject was considered with a view to commerce and finance, or on the more extensive scale of policy, there would be a want of wisdom, and almost of piety, in neglecting to employ, for public advantage, those means which Divine Providence had placed so completely within her power. They estimated the ultimate income of the canal at one million two hundred and fifty thousand dollars; a revenue adequate to defray the cost of the enterprise. With the earnestness so characteristic of Mr. Morris, the report proceeds: "Things which, twenty years ago, a man would have been laughed at for believing, we now see. At that time the most ardent mind, proceeding on established facts by the unerring rules of arithmetic, was obliged to drop the pen at results which imagination could not embrace. Under circumstances of this sort, there can be no doubt that those microcosmic minds which, habitually occupied in the consideration of what is little, are incapable of discerning what is great, and which already stigmatize the proposed canal as a romantic scheme,

will not unsparingly distribute the epithets, absurd, ridiculous, chimerical, on the estimate of what it may produce. The commissioners must, nevertheless, have the hardihood to brave the sneers and sarcasms of men, who, with too much pride to study and too much wit to think, undervalue what they do not understand, and condemn what they can not comprehend." The commissioners, imbued with the spirit of philosophic prophecy, add: "The life of an individual is short. The time is not distant when those who make this report will have passed away. But no term is fixed to the existence of a state; and the first wish of a patriot's heart is that his own may be immortal. But, whatever limit may have been assigned to the duration of New York, by those eternal decrees which established the heavens and the earth, it is hardly to be expected that she will be blotted from the list of political societies before the effects here stated shall have been sensibly felt. And even when, by the flow of that perpetual stream which bears all human institutions away, our constitution shall be dissolved and our laws be lost, still the descendants of our children's children will remain. The same mountains will stand, the same rivers run. New moral combinations will be formed on the old physical foundations; and through the extended line of remote posterity, after a lapse of two thousand years, and the ravage of repeated revolutions, when the records of history shall have been obliterated, and the tongue of tradition have converted (as in China) the shadowy remembrance of ancient events into childish tales of miracle, this national work shall remain, bearing testimony to the genius, the learning, the industry and intelligence of the present age."

Passing the advantages which the state must derive from opening a scene so vast to the incessant activity of her citizens, the commissioners discussed and proved her fiscal ability to complete the enterprise. Impressed with the same expansive views which were exhibited in the first efforts of the legislature in 1792, the commissioners adverted to the proposed connection of Lake Champlain with the Hudson river, as one which would certainly tend to preserve brotherly affection in the great American family, and through the reciprocal advantages it would afford to New York and Vermont, would strengthen the bonds of our union with the eastern states.

On the 19th of June, 1812, a law was enacted, reappointing

the commissioners, and authorizing them to borrow money and deposite it in the treasury, and to take cessions of land, but prohibiting any measures to construct the canals.

In the senate, James W. Wilkin, of Orange county, moved to reject the bill. The motion was lost, fifteen to eleven. The assembly divided on the first section, which contained the principle of the bill, and it was sustained by a vote of fifty-one to forty-two. On its return to the senate, with an amendment, Erastus Root, of Delaware, moved to postpone the consideration of the amendment until the next session, which would have been equivalent to rejecting the bill. This motion received thirteen votes, while sixteen were recorded against it.

From 1812 to 1815, the country suffered the calamities of war, and projects of internal improvement necessarily gave place to the patriotic efforts required to maintain the national security and honor. But those plans were not altogether forgotten, at least by those who distrusted their wisdom. Although there was much incredulity in regard to the Erie canal, during all the period which we have been considering, yet the design met little or no opposition, so long as it was supposed that the necessary expenditures would be made by the federal government. But a severe scrutiny was encountered, when it was avowed that the means for accomplishing so large a work must be derived from taxation, or from the use of the public credit. Erastus Root, in 1813, submitted a resolution, by which the commissioners were to be called upon for a further report of their proceedings. The commissioners, in their report of 1814, reaffirmed their confidence in the feasibility of the enterprise, and adverted to the facilities which would be found for extending the communication to the valleys watered by the Susquehannah and its branches, whence they inferred that Pennsylvania would, at a proper time, co-operate in the enterprise. The commissioners also announced that grants of land would be made by the Holland Company of 100,632 acres; by Le Roy Bayard and M'Evers, of 2,500 acres; by the heirs of the Pulteney estate, a large tract; and by Governor Hornby, 3,500 acres. These cessions were ultimately realized, with a liberal donation from Gideon Granger.

Mr. Root introduced a bill into the senate, which two days afterward passed that body, repealing so much of the act then in force as authorized the commissioners to borrow five millions of

dollars. This repeal was a virtual abandonment of the policy of internal improvements. The divisions in the assembly show a majority of eighteen in favor of the repeal; and in the senate the majority was eight. In 1816, at the close of the war, Daniel D. Tompkins, governor, in his annual speech, submitted, for the consideration of the legislature, the expediency of prosecuting the canals. Citizens in various parts of the state, and especially in New York, Albany, and Troy, and in the towns and counties situated in the vicinity of the proposed routes, now earnestly applied for vigorous measures to accomplish the objects so long delayed. Among these petitions was a memorial by inhabitants of the city of New York, from the pen of De Witt Clinton.

The memorialists declared, that since the object was connected with the essential interests of the country, and calculated in its commencement to reflect honor on the state, and in its completion to exalt it to an elevation of unparalleled prosperity, they were fully persuaded that centuries might pass away before a subject would be again presented so worthy of all the attention of the legislature, and so deserving of all its patronage and support; that the improvement of intercourse between different parts of the same country, had always been considered the first duty, and the most noble employment of government; that canals united cheapness, celerity, certainty, and safety, in the transportation of commodities; that they operated upon the general interests of society in the same way as machines for saving labor in manufactures; and, as to all the purposes of beneficial communication, they diminished the distances between places, and therefore encouraged the cultivation of the most remote parts of the country; that they created new sources of internal trade, and augmented the old channels, thus tending to enlarge old and erect new towns, increase individual and aggregate wealth, and extend foreign commerce. The memorialists attributed the prosperity of ancient Egypt and China to their inland navigation, and expressed the opinion that England and Holland, if deprived of their canals, would lose the most prolific sources of their prosperity and greatness. Inland navigation, they said, was to the same community what exterior navigation was to the great family of mankind; and that as the ocean connected the nations of the earth by the ties of commerce and the benefits of communication, so did lakes, rivers, and canals, operate upon the inhab-

itants of the same country. Applying these general arguments in favor of inland navigation, they showed that a great chain of mountains passed through the territory of the United States, and divided it into eastern and western America; that the former, on account of the priority of its settlement, its vicinity to the ocean, and its favorable position for commerce, had many advantages, while the latter had a decided superiority in the fertility of its soil, the benignity of its climate, and the extent of its territory; that to connect those great sections by inland navigation, to unite our Mediterranean seas with the ocean, was evidently an object of the first importance to the general prosperity; that the Hudson river offered superior advantages for effecting this connection, because it afforded a tide navigation through the Blue ridge or eastern chain of mountains, and ascended above the eastern termination of the Catskill or great western chain, and that no mountains interposed between it and the great western lakes, while the tide in no other river or bay in the United States ascended higher than the Granite ridge, or within thirty miles of the Blue ridge. After showing the importance of the Hudson as a natural channel of trade, one hundred and seventy miles in length, the petitioners showed that the canal would be virtually an extension of that channel three hundred miles through a fertile country, embracing a great population, and abounding with all the productions of industry; and they asked, if this work was so important when viewed in relation to this state alone, how unspeakably beneficial must it appear when the contemplation should be extended to the great lakes, and the country that surrounded them; waters extending two thousand miles, and a country containing more territory than all Great Britain and Ireland, and at least as much as France. After demonstrating that New Orleans and Montreal were the only formidable rivals of New York for the great prize of the western trade, and showing the advantages in that competition which New York would derive from the proposed Erie canal, a glowing view of its prospective benefits was presented. Leaving to her rivals no inconsiderable portion of the western trade, New York, said the memorialists, would engross more than sufficient to render her the greatest commercial city in the world. The whole line of the canal would exhibit boats loaded with the various productions of our soil, and with merchandise from all parts of the world; great manufac-

turing establishments would spring up; agriculture would establish its granaries, and commerce its warehouses, in all directions; villages, towns, and cities, would line the banks of the canal and the shores of the Hudson from Erie to New York; the wilderness and the solitary place would become glad, and the desert would blossom as the rose.

The petitioners then presented the superior advantages of a continuous canal from the Hudson to Lake Erie, over one which would terminate at Lake Ontario, with a passage between that lake and Lake Erie around the falls of Niagara. They then showed that the work might be completed by the use of the credit of the state, provision being made to pay the interest on the money borrowed until the canal should become productive of revenue. They urged with earnestness the immediate commencement of the work. Delays, said they, are the refuge of weak minds; and to procrastinate on this occasion is to show a culpable inattention to the bounties of nature, a total insensibility to the blessings of Providence, and an inexcusable neglect of the interests of society. If, they added, it were intended to advance the views of individuals, or to foment the divisions of party; if the scheme promoted the interests of a few at the expense of the prosperity of many; if its benefits were limited as to place, or fugitive as to duration, then indeed it might be received with cold indifference, or treated with stern neglect; but the overflowing blessing from this great fountain of public good and national abundance, would be as extensive as our country, and as durable as time.

The petitioners enforced their eloquent appeal for an immediate commencement of the enterprise, by the considerations that it could not be prosecuted at any future time with less expense; that the longer it was delayed, the greater would be the difficulty in surmounting the interests which would rise up in opposition; that there was an urgent necessity for immediately diminishing the expense of transportation; that it would raise the value of the national domain, and thus cause the speedy extinguishment of the national debt and a diminution of taxes, leaving a considerable source of revenue to be expended in other works of improvement, in encouraging the arts and sciences, in patronizing the operations of industry, in fostering the inventions of genius, and in diffusing the blessings of knowledge;

that New York was both Atlantic and western, and the only state in which an indissoluble union of interest between the great sections of the confederacy could be formed and perpetuated; that she would justly be considered an enemy to the human race, if she did not exert for this purpose the high faculties which the Almighty had put into her hands; and lastly, that the enterprise, as to the countries which it would connect, and as to the consequences which it would produce, was without a parallel in the history of mankind. While, they remarked, the chiefs of powerful monarchies had projected or executed designs which had attracted the admiration of the world, it remained for a free state to create a new era in history, and to erect a work more stupendous, more magnificent, and more beneficial, than any hitherto achieved by the human race.

Two vacancies had occurred in the canal commission; Robert R. Livingston having died in 1815, which event was followed by the lamented death of Robert Fulton, whereby the friends of internal improvement were deprived of the further co-operation of one, whose services in perfecting steam navigation had conferred such signal benefits on the human race. The board of commissioners was now composed of Gouverneur Morris, Stephen Van Rensselaer, De Witt Clinton, Simeon De Witt, William North, Thomas Eddy, Peter B. Porter, and Charles D. Cooper. They submitted a report, from which Mr. Morris withheld his signature, for the reason, as was said, that his idea of a uniform declivity from Lake Erie to the Hudson, was abandoned.* They expressed a confident belief that the public mind was now prepared for a commencement of the Erie canal; announced that they had assurances that a loan of one million of dollars, at an interest of six per cent., could be obtained, and subsequent sums as fast as should be required; suggested the expediency of constructing first the middle section, extending from Rome to the Seneca river, because it would yield a large revenue, and trade might be thereby diverted from the valley of the St. Lawrence, and again urged the simultaneous prosecution of the Champlain canal.

The joint committee on canals, at this session, consisted of William Ross, George Tibbits, Philetus Swift, and Peter R. Livingston, of the senate; and Jacob R. Van Rensselaer,

* Colden's Memoir.

Thomas J. Oakley, William Thompson, James Lynch, Benjamin Mooers, Myron Holley, William D. Ford, and George Warner, of the assembly. Mr. Van Rensselaer, from that committee, introduced a bill providing for the immediate commencement of both canals, and pledging ample funds for that purpose. The bill, after a discussion of four weeks, passed the assembly by the decisive vote of ninety-one to eighteen. Those who voted in the affirmative, were Aaron Adams, Truman Adams, Joshua Ballard, Asa C. Barney, Joseph Bayley, John H. Beach, William C. Bouck, Isaac Brayton, Philip Brasher, John Brown, junior, Thomas Brown, Oliver Brown, William Campbell, Israel Chapin, Jonathan Childs, Nathan Christie, Abel Cole, George Cramer, Silas Crippen, David Dill, William A. Duer, Henry Fellows, William D. Ford, Michael Freligh, James Ganson, Isaac Gere, Job Greene, David E. Gregory, George Hall, Nathan Hall, junior, Nicoll Halsey, William Hamilton, Michael Harris, Isaac Hayes, Nathaniel P. Hill, Peter A. Hilton, Henry Hopkins, Eliphalet S. Jackson, Peter A. Jay, Oliver Judd, Alexander Kelsey, Nathan Kimball, Herman Knickerbacker, Edward W. Laight, Jacob L. Larzelere, Thomas Lawyer, Henry Leavenworth, Henry B. Lee, Henry Livingston, James Lynch, Samuel I. M'Chestney, John M'Fadden, Arunah Metcalf, Elijah Miles, Green Miller, Samuel Milliman, Benjamin Mooers, Andrew Morris, Roderick Morrison, Thomas J. Oakley, Elias Osborn, John I. Ostrander, James Palmer, William Parks, Timothy H. Porter, James Powers, Edmund G. Rawson, John Reid, Jacob Roggen, Abraham Rose, David Russell, Reuben Sanford, John Schoolcraft, Barnabas Smith, Jesse Smith, Joseph Smith, Roger Sprague, James Stevenson, Selah Strong, Thomas C. Taylor, William Thompson, Jacob R. Van Rensselaer, George Warner, Elizur Webster, Dirck Westbrook, Roswell Weston, John Whiting, Mason Whiting, Nathan Williams, Isaac Wilson, and Augustus Wyncoop. Those who voted in the negative were Gamaliel H. Barstow, James Burt, Phineas Carl, Stephen Carman, Richard Cowson, Chillus Doty, Zechariah Hoffman, Benjamin Isaacs, William Jones, Daniel Kissam, Abraham Miller, William Munroe, William Requa, Amos Stebbins, Richard Van Horne, Harmanus A. Van Slyck, John B. Van Wyck, William Woodward.

When the bill reached the senate, Martin Van Buren proposed an amendment to limit the powers of the commissioners to the

consideration and adoption of measures requisite to facilitate the preparations for constructing the canals, the employment of engineers to explore and examine the routes; to making application to sister states and territories for aid, and to proprietors of land, corporations, and citizens, for grants of land, or donations of money; and to general inquiries concerning finances. This amendment prevailed, by a vote of twenty to nine, and the bill passed the senate, after being further amended so as to constitute Stephen Van Rensselaer, De Witt Clinton, Samuel Young, Joseph Ellicott, and Myron Holley, commissioners, and to appropriate twenty thousand dollars for the purposes contemplated. As thus amended, the bill received the votes of David Allen, Russel Atwater, Jacob Barker, Stephen Bates, Bennet Bicknell, Francis A. Bloodgood, Moses I. Cantine, Archibald S. Clark, Lucas Elmendorf, Chauncey Loomis, Peter H. Radcliff, William Ross, Henry Seymour, Samuel Stewart, Philetus Swift, Martin Van Buren, Abraham Van Vechten, Samuel Verbryck, and Gerrit Wendell. Those who voted against the bill were James Cochran, Darius Crosby, Jonathan Dayton, Perley Keyes, Peter R. Livingston, and David Ogden. The bill received the concurrence of the assembly, and became a law, after an ineffectual effort to induce the senate to recede from their amendments.

The commissioners selected De Witt Clinton to be their president, and appointed Samuel Young their secretary, and Myron Holley their treasurer; divided the canal route into three sections, middle, eastern, and western, and appointed engineers for each section. In 1817, they made a detailed report of the survey. They estimated the cost of the Erie canal at four millions five hundred and seventy-one thousand, eight hundred and thirteen dollars, and showed that its entire length would be three hundred and fifty-three miles; that the surface of Lake Erie was five hundred and sixty-four feet higher than the Hudson, and one hundred and forty-five feet higher than Rome; and that the aggregate rise and fall would be six hundred and sixty-one feet, which would require the construction of seventy-seven locks. The dimensions of the canal, as established, were forty feet width at the surface, twenty-eight feet at the bottom, and four feet depth.

The commissioners, although they spoke discouragingly, did not yet relinquish the hope of aid from the federal government,

and from sister states; and they recorded the enlightened and generous resolution of Ohio, to aid as far as her resources would justify, in the construction of a work, the advantages of which to herself and to the Union she so clearly discerned. The commissioners further reported, that although they had not accurate information, they had no doubt that loans of money sufficient for the construction of the work could be obtained, and that ample funds could be commanded for the payment of interest and the extinguishment of the debt, without taxation.

The commissioners, at the same session, submitted a further report, showing that the estimated cost of the Champlain canal was eight hundred and seventy-one thousand dollars, and recommending its immediate construction. The joint legislative committee on the canals consisted of Peter R. Livingston, George Tibbits, and Philetus Swift, of the senate; and William D. Ford, Nathaniel Pendleton, Jonathan Child, Henry Eckford, and Gideon Wilcoxson, of the assembly. Mr. Ford made an elaborate report in favor of the immediate commencement and vigorous prosecution of both works; submitted a scheme of finance, which formed the basis of the plan ultimately adopted, and brought in a bill entitled, "An Act concerning Navigable Communications between the Great Western and Northern Lakes and the Atlantic Ocean." This bill, which, after a very full discussion in both houses, became a law, provided for an immediate commencement of the canals; and thus, after a struggle of ten years, the ascendency of the policy of internal improvement was complete.

The sentiments of subdued confidence on the part of the legislature, in finally adopting that policy, were thus expressed in the preamble to the law: "Whereas, navigable communications between Lakes Erie and Champlain, and the Atlantic ocean, by means of canals connected with the Hudson river, will promote agriculture, manufactures, and commerce, mitigate the calamities of war, and enhance the blessings of peace, consolidate the Union, and advance the prosperity and elevate the character of the United States: And whereas, it is the incumbent duty of the people of this state, to avail themselves of the means which the Almighty has placed in their hands for the production of such signal, extensive, and lasting benefits to the human race: Now, therefore, in full confidence that the Congress of the United States, and the states equally interested with this state in the

commencement, prosecution, and completion of those important works, will contribute their full proportion to the expense; and in order that adequate funds may be provided, and properly arranged and managed, for the prosecution and completion of all the navigable communications contemplated by this act." The act constituted a canal fund to consist of such appropriations, grants, and donations, as might be made by the legislature, by the federal government, by states, and by corporations, companies, and individuals, and placed it under the management of a board of commissioners of the canal fund, "to be composed of the lieutenant-governor, comptroller, secretary of state, attorney-general, surveyor-general, and treasurer." The board was authorized to borrow moneys on the public credit, at an interest not exceeding six per centum, and not exceeding in one year a sum which, together with the income of the fund, should amount to four hundred thousand dollars. For the moneys to be borrowed, the comptroller was to issue transferable stock. Stephen Van Rensselaer, De Witt Clinton, Samuel Young, Joseph Ellicott, and Myron Holley, were reappointed commissioners, under the denomination of canal commissioners. The comptroller was directed to pay to them the moneys to be borrowed, and the income of the canal fund, reserving always sufficient to pay the interest on loans. The canal commissioners were empowered to establish and collect reasonable tolls whenever any portion of the work should be completed. The fee-simple of the canals was to be vested in the people, provision being made to indemnify the proprietors of lands. The commissioners were also to take measures for vesting in the people the title of the property of the Western Inland Lock Navigation Company, paying that association for the same out of the canal fund. A duty of twelve and a half cents per bushel on all salt to be manufactured in the then western district of the state, a tax on steamboat passengers, the unappropriated proceeds of all lotteries, the net proceeds from the property and tolls of the Western Inland Lock Navigation Company, the net revenues of the canals, all grants and donations, and all duties upon sales at auction—after deducting existing appropriations of thirty-three thousand five hundred dollars—were pledged for the prosecution of the works and the payment of the interest, and the final redemption of the stock to be issued for that purpose.

It is scarcely necessary to remark, that the growing power and influence of the western and northern portions of the state were chiefly effective in securing the commencement of the canals. The representatives from other regions in yielding the acknowledgment of that influence, still entertained so much distrust of the productiveness of the works, that they insisted upon incorporating in the law a provision for levying a tax of $250,000 upon the lands lying along the routes of the canals, and within a distance of twenty-five miles on each side thereof. This provision undoubtedly affected the votes upon the passage of the law. In the assembly sixty-four members voted for, and thirty-six against it. Those in the affirmative were, Henry Albert, David I. Ambler, Isaac Barber, Wheeler Barnes, John H. Beach, Abijah Beckwith, John Brown, junior, John H. Burhans, Abram Camp, William Campbell, Daniel Carpenter, Jonathan Childs, Gerret Cuck, Rowland Day, John D. Dickinson, William A. Duer, Tunis B. Eldridge, James Faulkner, James Finch, Henry Fonda, William D. Ford, James Ganson, Archer Green, Henry Gross, Burton Hammond, Elihu Hedges, Peter A. Hilton, James Houghtaling, Hezekiah Hulburt, Samuel Jackson, Jacob L. Larzelere, Joshua Lee, Newton Marsh, Moses Maynard, Greene Miller, John Miller, Benjamin Mooers, Zebulon Mott, Cyrenus Noble, Jonathan Olmsted, John I. Ostrander, Humphrey Palmer, Nathaniel Pendleton, Nathaniel Pitcher, John Pixley, Henry Platt, Timothy H. Porter, Jedediah Prendergast, William B. Rochester, James Roseburgh, George Rosenkrantz, Isaac Sears, Richard Smith, Gideon Tabor, Elijah Turner, Ebenezer Wakely, Ebenezer W. Walbridge, Rufus Watson, James Webb, Asa Wells, Gideon Wilcoxson, Elisha Williams, Isaac Wilson, and David Woods. Those who voted in the negative were, Cornelius A. Blauvelt, Levi Callender, Stephen Carman, William Cook, Richard C. Corson, Clarkson Crolius, Chillus Doty, James Emott, John Gale, Cornelius Heeny, William Jones, Martin Keeler, Daniel Kissam, John M'Fadden, Asa Mann, Elijah Miles, Abraham Parsons, John Pettit, Samuel B. Romaine, Samuel Russell, Reuben Sanford, Isaac Sargent, Edward Smith, junior, Joseph Smith, Samuel A. Smith, Justus Squire, Amos Stebbins, Christopher Tappen, junior, John Townsend, John Victory, George Warner, Elizur Webster, Ebenezer White, junior, and Ebenezer Wood.

In the senate the vote on the law was eighteen to nine. In the affirmative were, David Allen, Stephen Bates, Bennet Bicknell, Moses I. Cantine, James Cochran, Ralph Hascall, Ephraim Hart, Perley Keyes, John Knox, William Mallory, John I. Prendergast, William Ross, Farrand Stranahan, Samuel Stewart, Peter Swart, George Tibbits, Martin Van Buren, and Abraham Van Vechten; and in the negative, Henry Bloom, Walter Bowne, Darius Crosby, Jonathan Dayton, John D. Ditmis, Lucas Elmendorf, Peter R. Livingston, John Noyes, and Isaac Ogden.

The geographical classification of members voting for and against the law was as follows:—

IN THE SENATE.

	Affirm.	Neg.		Affirm.	Neg.
Southern district		5	Eastern district	7	
Middle "	6	3	Western "	5	1
				18	9

IN THE ASSEMBLY.

Suffolk		1	Schenectady		1
Queens		3	Schoharie	2	
Richmond		1	Montgomery	4	
New York		7	Herkimer	3	
Westchester		3	Lewis and Jefferson		3
Rockland		1	Otsego	5	
Putnam		1	Chenango, Broome, and Tioga	2	1
Dutchess	2	2	Madison	3	
Orange	3	1	Oneida	4	
Ulster and Sullivan	1	1	Onondaga	3	1
Greene		2	Cortland	1	
Columbia	4		Cayuga	3	1
Rensselaer	5		Seneca	2	
Albany	4		Ontario	3	
Washington and Warren	2	3	Genesee	2	1
Saratoga	1	1	Steuben and Allegany	2	
Essex		1	Niagara, Cattaraugus, and Chautauque	2	
Clinton and Franklin	1				
St. Lawrence					
				64	36

The ground was broken, for the construction of the Erie canal, on the fourth day of July, 1817, at Rome, with ceremonies marking the public estimation of that great event. De Witt Clinton, having just before been elected to the chief magistracy of the state, and being president of the board of canal commissioners, enjoyed the high satisfaction of attending, with his associates, on the auspicious occasion.

In his annual speech to the legislature in 1818, he congratulated the people on the commencement of the canals, rapidly reviewed the progress already made in their construction, remarked briefly on their advantages, and earnestly urged that the state was required to persevere, by every dictate of interest, by every sentiment of honor, by every injunction of patriotism, and by every consideration which ought to influence the councils and govern the conduct of a free, high-minded, enlightened, and magnanimous people. The senate responded favorably to these sentiments, and the answer of the assembly was in terms of spirited congratulation.

The commissioners made a report, showing that they had engaged Isaac Briggs, an eminent mathematician, as an engineer on the middle section, and had let the work to be done in small portions, by contract.

At this session, laws were passed, authorizing the construction of the Chittenango canal for navigation, and as a feeder to the Erie canal; and an examination of the outlet of Buffalo creek, with a view to form a harbor at the entrance of the Erie canal into Lake Erie, and make improvements of the financial system adopted at the previous session. The act relating to the last-mentioned subject, authorized the comptroller to borrow one million of dollars for the general uses of the treasury, and to issue therefor stock redeemable on the first of January, 1828. When this law was under consideration in the assembly, Erastus Root moved that the power of the commissioners of the canal fund to borrow money for canal purposes, should be suspended until the redemption of the stock debt to be created under the law. This was the last effort made in the legislature to arrest the prosecution of the canals. The motion was lost, only twenty-one members voting therefor.

In 1819, Governor Clinton announced to the legislature that the progress of the public works equalled the most sanguine expectations, and that the canal fund was flourishing. He recommended the prosecution of the entire Erie canal. Enlarging upon the benefits of internal navigation, he remarked, that he looked to a time not far distant, when the state would be able to improve the navigation of the Susquehannah, the Allegany, the Genesee, and the St. Lawrence; to assist in connecting the waters of the great lakes and the Mississippi; to form a junction between

the Erie canal and Lake Ontario through the Oswego river; and to promote the laudable intention of Pennsylvania to unite the Seneca lake with the Susquehannah; deducing arguments in favor of such enterprises, from the immediate commercial advantages of extended navigation, as well as from its tendency to improve the condition of society, and strengthen the bonds of the Union. Henry Yates, junior, in the senate, and John Van Ness Yates, in the assembly, on behalf of the proper committees, submitted answers concurring in the opinions expressed by the chief magistrate, and the same were adopted.

Joseph Ellicott having resigned the office of canal commissioner, Ephraim Hart was appointed in his place, ad interim, and subsequently Henry Seymour was called to fill the vacancy.

The canal commissioners, in their report, gave an interesting account of their proceedings, represented that the work on the middle section, under the care of Benjamin Wright as principal engineer, had been conducted with great success; and that Canvass White and Nathan S. Roberts, who had previously been assistant engineers, were assigned, on account of their eminent skill, to higher duties. Mr. White was distinguished at this time for his discovery of the manner of preparing an hydraulic cement, from a peculiar species of limestone found in the vicinity of the canal. He was the inventor, also, of the improvement in the construction of upper-gates of canal-locks, which has been said to be the only improvement in the mechanical construction of canals, made since the building of the Languedoc canal.

The commissioners recommended that a navigable communication should immediately be opened from the Erie canal to the salt-works at Salina, and that the militia law should be so modified as to excuse laborers on the canals from military duty, and sustained the recommendation by the governor of the simultaneous prosecution of all portions of the Erie canal.

The joint committee on internal improvements consisted of Jabez D. Hammond, Henry Seymour, and Walter Bowne, senators, and Ezekiel Bacon, Jacob Rutsen Van Rensselaer, John Doty, Jedediah Miller, and Asahel Warner, of the assembly. Mr. Bacon submitted a report, and introduced a bill, embodying the recommendations of the canal commissioners. This bill became a law, twenty-five members of the assembly voting against the section which empowered the canal commissioners to com-

mence the eastern and western portions of the Erie canal and the branch canal from the Erie canal to Salina. A survey was also authorized from the mouth of the Oswego river, up the same, the Seneca river and the outlet of the Onondaga river, with a view to improve the navigation of those streams. This was the first legislative step toward the construction of the Oswego canal.

At this session, a law was passed suspending the collection of the local canal tax, until further directions should be given by the legislature.

An act was also passed, granting a loan to citizens of Buffalo, to be applied to the construction, under the direction of the canal commissioners, of a harbor at that place, and providing for the assumption of the harbor, if it should ultimately be deemed expedient.

On the 23d of October, 1819, the portion of the Erie canal between Utica and Rome was opened to navigation, and on the 24th of November the Champlain canal admitted the passage of boats. Thus, in less than two years and five months, one hundred and twenty miles of artificial navigation had been finished, and the physical as well as the financial practicability of uniting the waters of the western and northern lakes with the Atlantic ocean, was established to the conviction of the most incredulous.

Governor Clinton announced these gratifying results to the legislature in 1820, and admonished them that while efforts directly hostile to internal improvements would in future be feeble, it became a duty to guard against insidious enmity; and that in proportion as the Erie canal advanced toward completion, would be the ease of combining a greater mass of population against the further extension of the system. Attempts, he remarked, had already been made to arrest the progress of the Erie canal west of the Seneca river, and he anticipated their renewal when it should reach the Genesee. But the honor and prosperity of the state demanded the completion of the whole of the work, and it would be completed in five years, if the representatives of the people were just to themselves and to posterity. Referring to the local tax, he submitted whether it comported with the magnanimity of government to resort to partial or local impositions to defray the expenses of a magnificent work, identified with the general prosperity. The commissioners informed the legislature that they had employed David Thomas to survey the proposed

harbor at Buffalo, and that plans for a similar improvement at Black Rock had been received.

The committee on internal improvements in the senate, consisted of Jabez D. Hammond, Gideon Granger and Stephen Barnum; and the committee on canals in the assembly, of George Huntington, John T. Irving, David Austin, Elial T. Foote, and Thomas J. Oakley.

A law was passed, suspending the collection of the tax on steamboat passengers, and imposing, by way of commutation, on the North River Steamboat Company an annual tax of five thousand dollars, for the benefit of the canal fund. This company then enjoyed, by grant from the legislature, a monopoly of steam navigation upon all the waters within the state, as a reward to Robert Fulton, Robert R. Livingston and their associates, as public benefactors. The grant was afterward adjudged by the supreme court of the United States to be void, so far as it affected navigation in tide waters, because it conflicted with the constitution of the United States. The same law appropriated twenty-five thousand dollars for the improvement of the Oswego river; and by other acts, Grand island on the Niagara river, and a portion of the reservation at the Onondaga salt springs, were directed to be sold for the benefit of the canal fund; and the legislature prescribed a general system of police for the manage- and protection of the canals.

By an arrangement made by the commissioners, and sanctioned by the legislature, three of the five commissioners were charged with active duties, to be compensated by salaries, while the other commissioners were relieved from such duties. The acting commissioners designated were Mr. Young, Mr. Seymour, and Mr. Holly. During the same year the title of the Western Inland Lock Navigation Company to its property and privileges, was transferred to the state, and a compensation of one hundred and fifty thousand eight hundred and twenty-eight dollars was paid for the same.

In November, 1820, Governor Clinton congratulated the legislature upon the progress of the public works. He urged the adoption of plenary measures to complete the Erie canal within three years, enforcing the recommendation by the consideration, that Ohio would thereby be encouraged to pursue her noble attempt to unite the waters of Lake Erie with the Ohio river. The

canal commissioners showed in their report that the Erie canal was navigable from Utica to the Seneca river, a distance of ninety-six miles, and that its tolls, during four months, had amounted to five thousand two hundred and forty-four dollars.

An effort was made in the assembly to abrogate the local tax, which failed; a result showing that distrust of the productiveness of the canals still lingered in the halls of the legislature. This, however, was the last effort, and the law has been suffered to remain ever since, unexecuted and unrepealed. William C. Bouck was, during the same session, appointed an acting canal commissioner.

Governor Clinton, in 1822, referred in his speech, to the difficulties and embarrassments which had been encountered with regard to the most eligible routes for the canals, and the most proper designations for the termini of the Erie canal; assuring the legislature, however, that the canal board had not been led astray by local considerations or ephemeral expedients, and that they would be able to combine the accommodation of flourishing cities and villages with the promotion of the general convenience and welfare. He noticed the efforts on the part of Illinois to connect the river of that name with Lake Michigan, and those of Ohio to unite with Lake Erie the river which formed her southern boundary, commending those efforts to the munificent patronage of the national government, and the favorable countenance of New York. He recommended also the institution of a board of public improvements, to be composed of enlightened and public spirited citizens, and invested with power to establish and facilitate all useful channels of communication, and all eligible modes of improvement.

The tolls on the portion of the Champlain canal which had been completed, amounted in the previous year, to one thousand, three hundred and eighty-six dollars.

The legislature at this session directed the canal commissioners to open a boat navigation between the village of Salina, the Onondaga lake and the Seneca river. These improvements when completed, together with those previously directed, created an artificial canal from the Erie canal to Lake Ontario, and constituted a portion of what afterward became known as the Oswego canal.

Acts were also passed to encourage the construction of harbors

at Buffalo creek and Black Rock, and to adapt the Glen's Falls feeder of the Champlain canal to boat navigation.

On the first of January, 1823, the government went into operation under the new constitution, Joseph C. Yates having been elected to the office of governor. The constitution declared that rates of toll not less than those set forth by the canal commissioners, in their report of 1821, should be collected on the canals, and that the revenues then pledged to the canal fund should not be diminished nor diverted before the complete payment of the principal and interest of the entire canal debt, a pledge which placed the public credit on an impregnable basis.

It appeared at the commencement of the session of the legislature in 1823, that the public debt amounted to $5,423,500, of which $4,243,500 were for moneys borrowed to construct the canals. The commissioners reported that boats had passed on the Erie canal, a distance of more that two hundred and twenty miles, and that as early as the first of July ensuing, that channel would be navigable from Schenectady to Rochester. The tolls collected in 1822, upon the Erie canal, were $60,000, and upon the Champlain canal, $3,625. The improvements of the outlet of Onondaga lake had been completed, and the Glen's Falls feeder was in a course of rapid construction. Among the benefits already resulting from the Erie canal, the commissioners showed that the price of wheat west of the Seneca river had advanced fifty per cent. To appreciate this result, it is necessary to understand that wheat is the chief staple of New York, and that far the largest portion of wheat-growing lands in this state lies west of the Seneca river.

Attempts were again made in both branches to provide for collecting the local tax. The proposition was lost in the senate by a vote of nineteen to ten, and in the assembly by a division of sixty-five to thirty-one.

The legislature expressed by resolution a favorable opinion of the inland navigation which New Jersey proposed to establish between the Delaware and Hudson rivers. A loan of $1,500,000 was authorized for canal purposes; a survey of the Oswego river was directed to be made, and estimates of the expense of completing the canal from Salina to Lake Ontario. An association to construct such a canal was incorporated, and authority given to the commissioners to take the work when completed, leaving

the use of its surplus waters to the corporators; and the eastern termination of the Erie canal was fixed at Albany.

The canal commissioners reported in 1824 that the Champlain canal was finished; that both canals had produced revenues during the previous year of one hundred and fifty-three thousand dollars, and that the commissioners had decided that the Erie canal ought to be united with the Niagara river at Black Rock, and terminate at Buffalo.

Myron Holley now resigned the office of canal commissioner; and laws were passed appropriating one million of dollars for canal purposes, and directing a survey for a canal from Lake Champlain to the St. Lawrence, with a view to complete the inland navigation between that river and the Hudson.

On the twelfth of April, 1824, John Bowman presented to the senate a concurrent resolution, that "De Witt Clinton, Esq., be and he is hereby removed from the office of canal commissioner;" and it was carried on the same day through the senate, by a vote of twenty-one to three, and through the assembly by a vote of sixty-four to thirty-four.

As soon as a partial navigation of the canals had commenced, the government of the United States asserted a pretension to exact tonnage duties thereon. The legislature of this state, at its adjourned session, instructed its senators and representatives in Congress to use their utmost endeavors to prevent such unjust and impolitic exactions; and the claim of the government of the United States, although not formally relinquished, has never since been urged.

On the reassembling of the legislature in January, 1825, De Witt Clinton, who, in November of the preceding year, had been again called to the office of chief magistrate, congratulated the legislature upon the prospect of the immediate completion of the Erie canal, and the reasonable certainty that the canal debt might soon be satisfied, without a resort to taxation, without a discontinuance of efforts for similar improvements, and without staying the dispensing hand of government in favor of education, literature, science, and productive industry. Earnestly renewing his recommendation that a board of internal improvement should be instituted, he remarked that the field of operations was immense, and the harvest of honor and profit unbounded; and that if the resources of the state should be wisely applied and forcibly

directed, all proper demands for important avenues of communication might be satisfied. The primary design of our system of artificial navigation, which was to open a communication between the Atlantic and the great lakes, was already, he observed, nearly accomplished, but would not be fully realized until Lake Ontario should be connected with the Erie canal and with Lake Champlain; and the importance of these improvements would be appreciated when it was understood that the lake-coast, not only of this state, but of the United States, was more extensive than their seacoast. The next leading object, he remarked, should be to unite the minor lakes and secondary rivers with the canals, and to effect such a connection between the bays on the seacoast as would insure the safety of boat-navigation against the tempests of the ocean in time of peace, and against the depredations of an enemy in time of war. He pointed out, as portions of this great system, the construction of canals to connect the Seneca, the Cayuga, the Canandaigua, and other lakes in the vicinity, with the Erie canal, and of a navigable channel from the Hudson to the Delaware; a union of the upper waters of the Susquehannah with the Genesee and the Allegany rivers; a connection of the Erie canal with the Susquehannah river, through the Chenango valley; of the same river with the Seneca lake; of the Erie canal at Buffalo with the Allegany river, at the confluence of that stream with the Conewango, and of the Black river with the Erie canal; and the construction of a navigable communication between Gravesend bay and other inlets of the sea, on the shore of Long Island. To these suggestions he added others, concerning the importance of an uninterrupted navigation of the upper waters of the Hudson river, and a road through the southern tier of counties from tidewater to Lake Erie.

Of this comprehensive plan, the Oswego canal, the Cayuga and Seneca canal, the Crooked Lake canal, the Chemung canal, the Chenango canal, and the Delaware and Hudson canal, are already completed; the Black River canal, the Genesee Valley canal, the New York and Erie railroad, and the Long Island railroad, are now in process of construction; while for the Ogdensburgh and the Lake Champlain railroad, the Conewango canal, the improvement of the northern branches of the Hudson, and the projected continuation of the Chemung and Chenango canals, surveys have been made under legislative authority.

Railroads, recently adopted in Europe for general purposes of transportation, were at that time unknown on this side of the Atlantic; but the scheme of internal improvement marked out by Clinton has been found eminently practicable with the application of that invention, as a substitute in many places for canals.

The public debt for the canals in 1825 amounted to seven and a half millions of dollars (all of which, it must be recorded to the honor of the state and the country, had been borrowed of American capitalists), and the annual interest thereon to three hundred and seventy-six thousand dollars. The governor estimated that the tolls for the year would exceed three hundred and ten thousand dollars; that the duties on salt would amount to one hundred thousand dollars, and that these, with the other income of the canal fund, would produce a revenue exceeding, by three hundred thousand dollars, the interest on the canal debt. He stated, also, that ten thousand boats had passed the junction of the canals near tidewater during the previous season. Remarking that the creative power of internal improvement was manifested in the flourishing villages which had sprung up or been extended; in the increase of towns; and, above all, in the prosperity of the city of New York; and noticing the fact that three thousand buildings had been erected in that city during the preceding year, Clinton predicted that in fifteen years its population would be doubled, and that in thirty years that metropolis would be the third city in the civilized world, and the second, if not the first, in commerce.

Adverting to the efforts which Ohio was making to connect Lake Erie (which, he remarked, might now be regarded as a prolongation of the Erie canal) with the Ohio river, he declared that he should welcome the commencement, and hail the consummation, of that work as among the most auspicious events in our history; and he closed his review of the condition and prospects of the state with this exclamation: "How emphatically does it behoove us, in the contemplation and enjoyment of these abundant blessings, to remember that we derive them all from the great Fountain of benevolence!"

The canal commissioners, alluding to the pressure of business on the eastern section of the canal and the probability of its rapid increase, announced to the legislature that it would be necessary before long to exclude passenger-boats from this part of the line,

unless double locks were made through the whole distance, and remarked that even then the crowd of boats in the spring and fall would produce great inconvenience and delay. Reasoning that in many places it would be almost impossible to construct double locks, and that in others it would be attended with great expense, they inferred that in a very few years it would be proper, and perhaps indispensable, to make a parallel canal along the valley of the Mohawk. They showed that, in 1820, the tolls on ninety-four miles of the Erie canal were $5,000; in 1821, on the same distance, $23,000; in 1822, on one hundred and sixteen miles, $57,000; in 1823, on one hundred and sixty miles, $105,000; and in 1824, on two hundred and eighty miles, had reached the sum of $294,000. They submitted tables, in which they estimated the tolls on a basis of the increase of the population, and the progress of agricultural improvement, and predicted that, in 1836, two millions of people would be within the influence of the Erie canal; that its tolls would in that year reach the sum of one million of dollars; and that, if the rates should not be reduced, they would amount in 1846 to two millions of dollars, and in 1856 to four millions.

At this session, Samuel Dexter, junior, introduced a bill into the assembly for exploring a route to connect the waters of the Black river with the Erie canal; Jacob Adrian Van Der Heuvel brought in a bill to construct a canal from Potsdam, in St. Lawrence, to the Oswegatchie, and to improve the navigation of that river; and Thurlow Weed proposed a survey with a view to connect the Allegany river at Olean with the Erie canal at Rochester, by a navigable communication through the valley of the Genesee river. Laws were passed at the same session, authorizing the construction of the Cayuga and Seneca canal, adopting the Oswego canal as a state work, and providing for surveys for most of the other improvements recommended by the governor; and the legislature, in view of the approaching completion of the main arteries of the system of inland navigation, directed that all the laws, reports, and documents, relative to the canals, requisite for a complete official history of these works, with necessary maps and profiles, should be carefully collected and published. This duty was performed with much accuracy by a legislative committee, with the assistance of John Van Ness Yates, then secretary of state, who had been one of the most constant and

efficient friends of the policy, of whose history he thus became the guardian.

On the 26th of October, 1825, the Erie canal was in a navigable condition throughout its entire length, affording an uninterrupted passage from Lake Erie to tidewater in the Hudson. Thus, in eight years, artificial communications, four hundred and twenty-eight miles in length, had been opened between the more important inland waters, and the commercial emporium of the state. This auspicious consummation was celebrated by a telegraphic discharge of cannon, commencing at Lake Erie, and continued along the banks of the canal and of the Hudson, announcing to the city of New York the entrance on the bosom of the canal of the first barge that was to arrive at the commercial emporium from the American Mediterraneans. Borne in this barge, De Witt Clinton and his coadjutors enjoyed the spectacle of a free people rejoicing in the assurances of prosperity increased, and national harmony confirmed; and were hailed, in their passage through towns and cities they might almost be said to have called into existence, with the language of irrepressible gratitude and affection.

The governor, suppressing all feelings of self-gratulation, announced these events to the legislature of 1826, as evidences of the ability, as well as the disposition of republican governments to promote the welfare of mankind. He congratulated the representatives of the people that the spirit of internal improvement continued in full power here, and had diffused itself into other states. He announced that the Oswego canal, and the Cayuga and Seneca canal, had been diligently prosecuted; that the proposed canal between the Hudson and Delaware rivers, a work encountering formidable physical difficulties, was in successful progress, under the care of an incorporation which sought a trade with the coal districts of Pennsylvania, and that commissioners, appointed at a previous session, were surveying a road from Lake Erie to the Hudson, and that works scarcely less intimately connected with the prosperity of this state and the success of her system of improvements, were in process of construction by the state of Ohio.

The whole cost of the Erie and Champlain canals was stated at $9,130,000; the canal debt at $7,738,000, and its annual interest at $413,000. The canal commissioners reported that the tolls,

during the preceding year, were $566,221; and they estimated them for the current year at $750,000, which, with the other revenues of the canal fund, would make the sum of $1,100,000, and, after paying all expenses and interest, leave applicable to the reduction of the principal $575,000.

The year 1826 was distinguished by the commencement of the railroad policy in the state of New York. Stephen Van Rensselaer and others were incorporated with power to construct a railroad from Albany to Schenectady, and the right to enjoy for fifty years the profits of the enterprise; but the state reserving the right to assume the road on paying to the company the excess of the cost, with interest thereon, over the profits of the work. This important feature has been incorporated in all the charters since granted for the construction of railroads, and circumstances are now occurring which indicate its importance.

The legislature in 1827 was occupied, so far as internal improvements were concerned, with the policy of aiding the Delaware and Hudson Canal Company; with discussing the most eligible route for a connection between the Erie canal and the Susquehannah river; and with considering the merits of the projected state-road through the southern counties. Then, and during several successive years, the general policy of internal improvement being scarcely questioned, the public mind was engaged rather with the comparative merits of various projects, than in digesting and perfecting a system.

In 1835, the debt of the state, incurred in the construction of the Erie and Champlain canals, had virtually been paid. Moneys derived from the revenues of the canal fund, equal to the canal debt, had accumulated and been invested for the security of the public creditors; and the revenues arising from salt and auction duties were now, by an amendment of the constitution, diverted to the general purposes of the treasury; and the state was, therefore, in the full enjoyment of those revenues, as well as such as were derived from the canals.

It was now found that the locks and other mechanical structures on the Erie canal, were worn by time and use; inconveniences were experienced in consequence of its limited dimensions and inadequate lockage; and notwithstanding its eminent productiveness, it had failed to accomplish fully the objects of its construction, inasmuch as a considerable amount of western

trade continued to seek markets by other routes. It was obvious, moreover, that the capacity of that channel should be increased to reduce the expenses of transportation. The legislature, therefore, directed that an enlargement should be undertaken whenever the canal board should be of opinion that the public interest required such an improvement; and it was referred to the discretion of the board to fix the dimensions of the new channel. The canal board adopted the dimensions of seventy feet width and seven feet depth, with double locks. The act of 1835 limited, however, the expenditures for the enlargement, to the annual surplus of the canal tolls, which, after 1837, was to be annually diminished by a considerable sum, to be devoted to the uses of the treasury. In 1836, the legislature directed the long contemplated construction of the Genesee Valley canal, and of the Black River canal; and during this year those improvements were commenced, and the enlargement of the Erie canal was prosecuted. A loan of the public credit, to the amount of three millions of dollars, was, at the same session, made to a company which had been incorporated in 1832, for the construction of a railroad between the Hudson river and Lake Erie, through the southern range of counties.

The canal commissioners, in 1837, reported the progress which had been made in the construction of the Genesee Valley and Black River canals, and the enlargement of the Erie canal, and recommended the more speedy prosecution of the latter work.

In 1838, the governor, William L. Marcy, announced that the canal commissioners were devoting to the enlargement of the Erie canal, all the means placed within their control; that no new contracts, however, have been entered into during the preceding year, and that some failures and delays had occurred with respect to those previously made. He remarked, that the best interests of the state appealed with great earnestness for the early completion of that important improvement, and he was persuaded that a larger sum than the existing appropriation might be advantageously expended without causing an interruption or delays in navigation. Adverting also to the advantages of the canal as a channel for western trade, he declared that both duty and interest indicated the propriety not only of making it adequate to the public wants, but of doing so at the earliest practicable period.

Stephen Van Rensselaer, William C. Bouck, Jonas Earll, junior, John Bowman, and William Baker, were then canal commissioners. They urged the vigorous prosecution of the enlargement as a measure of enlightened economy and foresight. But apprehensions were found in the legislature, that the policy recommended could not be pursued without committing too deeply the credit of the state. Although the feasibility of the New York and Erie railroad had been demonstrated, yet that important enterprise had not sufficiently gained the confidence of the community, to secure subscriptions and payments upon its capital stock, sufficient for its prosecution, without a modification of the conditions upon which the company then enjoyed a loan of public credit. To some extent that enterprise was regarded as one of local character, and it therefore found little favor in remote regions of the state. The enlargement of the Erie canal assumed a similar aspect, in the view of those who desired the former improvement. A general suspension of specie payments, by banking institutions throughout the Union, had occurred in 1837; and a commercial revulsion unprecedented in the history of the country, and the effects of which have not yet entirely passed away, was paralyzing the energies of men in every department of industry and enterprise. Under these circumstances all questions before the legislature, in relation to the public works, were merged in the important consideration of the financial ability of the state. The comptroller, Azariah C. Flagg, in his annual report, examined the resources and condition of the treasury, and earnestly recommended a system of finance, of which taxation should be a part, the adoption of which would, in his opinion, insure the prompt payment of the interest, and the ultimate redemption of the principal of the public debt.

Samuel B. Ruggles, chairman of the committee on ways and means of the assembly, submitted a report, in which he examined the condition of the finances, and reviewed the progress of internal improvements. In this paper he showed that, on the first of July, 1836, the revenues of the canal fund had accumulated to a sum sufficient to pay the canal debt; which incident it was declared ought to be regarded as the crowning event in the canal policy of the state, and as fixing an important era in its history. He further showed that when the canals were commenced, the state possessed productive property valued at

$2,740,000, yielding a revenue of $419,900; a school fund of $982,000; and a literature fund of $26,000: that when the canals were commenced, the net income of the treasury was reduced to $180,000 annually, by the diversion of the salt and auction revenues to the canal fund: that a tax which had previously been laid to defray the expenses of the late war, was then continued: that in 1826, the rapid increase of the canal tolls began to exhibit itself, and the state tax was discontinued, on the ground that the balance remaining of the general fund, $2,740,000, would sustain the government, until the debt, for which the salt and auction duties, and canal tolls, were pledged, should be extinguished; and that those revenues would then be liberated and placed at the service of the state: that by the exhaustion of the general fund, in defraying the ordinary expenses of the government, and by loans for the same purpose, the sum of $3,156,000 had been expended; but that the salt and auction duties, which had been received between the years 1817 and 1836, and paid to the public creditors, amounted to upward of $5,000,000; that those duties, to the amount of $5,000,000, were virtually invested in the canals as a substitute for the $3,156,000 expended during the same period for the ordinary purposes of government; and that the state, since the year 1825, had created a debt, then yet outstanding, for the construction of lateral canals, amounting to $3,555,000. He further showed that, in the twenty years since the commencement of the canals in 1817, the productive property of the state had increased from $2,973,617 to $22,157,742, or, after deducting the then existing state debt, to $17,624,986; that the annual revenue had increased from $419,907 to $1,413,846; that during the same period, $500,000 had been expended upon public buildings, the school and literature funds had been doubled, the state tax discontinued, and the people relieved from burthen or expense in supporting the government; that after applying $400,000 of the canal tolls annually to the support of the government, there would remain, applicable to purposes of internal improvement, an annual net revenue of $787,103; that that sum alone would pay the annual interest on $15,643,000; that any augmentation in the revenue of the canals would increase the financial ability of the state; that every $500,000 of revenue would serve as a basis of finance to sustain $10,000,000 of debt; and that, assuming the opinions of the canal commissioners ex-

pressed in their report of that year, that the canals soon after the completion of the enlargement would yield tolls to the amount of $3,000,000 per annum, the sum of thirty millions of dollars might be borrowed, expended, and finally reimbursed within twenty years; or the sum of forty millions might be so borrowed, expended, and reimbursed, within twenty-eight years. This view of the financial ability of the state was illustrated by estimates of the tolls and net revenue of the canals during a series of years, based upon the experience of the increase since their completion. In this table it was assumed that the net revenues from the canals for 1838 would be $800,000; that it would increase at the rate of $100,000 per annum, until 1842; that after that time, owing to the completion of the enlargement, and other works of internal improvement, and the increase of commerce, until 1845, it would increase at the rate of $200,000 per annum; and from 1845, until 1849, at the rate of $300,000 per annum; at which time the net revenue would reach the sum of $3,000,000.*

The sources from which this large accession of revenue was to be anticipated, were pointed out as existing in the extensive and rapidly-increasing communities growing up around the western lakes. The surprising progress already made by that interior group of states, in population, wealth, and productive power, was shown, and the pecuniary results to be realized from their further and necessary increase, were also predicted. The comparative advantages of the enlarged Erie canal, as an outlet for the trade of those interior communities, to the Atlantic, over its present course down the Mississippi to the gulf of Mexico, were also dwelt upon; and the importance of completing that work with all practicable despatch, was earnestly urged upon the legislature. The important commercial effects to be produced by completing the different lines and systems of artifical communication then in progress through those inland states, were also adverted to, together with the fiscal and political advantages to be derived by this state in procuring the transit through its territory for all time to come, of the immense trade of this vast interior region.

In accordance with the conclusions of this report, a law was passed, in 1838, appropriating four millions of dollars for the prosecution of the enlargement of the Erie canal. Laws were

* The actual amount, in 1849, was $3,268,226.—*Ed.*

also passed at the same session, loaning the credit of the state to the Catskill and Canajoharie, the Auburn and Syracuse, and the Ithaca and Owego railroad companies, to the extent of eight hundred thousand dollars, and modifying the loan to the New York and Erie Railroad Company.

An obvious propriety requires, that the writer of these notes should pass without comment, over the period that remains to be filled up with the progress of internal improvement. Samuel B. Ruggles was appointed canal commissioner in 1839, to fill the place rendered vacant by the widely-lamented death of the venerated Stephen Van Rensselaer. In 1840, Asa Whitney, Simon Newton Dexter, David Hudson, George H. Boughton, and Henry Hamilton, became canal commissioners. The present board consists of Jonas Earll, junior, James Hooker, George W. Little, Benjamin Enos, Stephen Clark, and Daniel P. Bissell. In 1840, the conditions of the loan to the New York and Erie Railroad Company were further modified, and appropriations were made to carry on the construction of the canals; and during the three years, from 1839 to 1842, all those works were vigorously prosecuted.

The tolls on all the canals in this state, during the season of navigation in 1841, were $2,034,878, exceeding those of 1840 by $259,831, equal to an increase of fourteen and a half per cent.; and those of 1831, by the sum of $811,077, equal to an increase in ten years, of more than sixty-six and one quarter per cent.

The New York and Erie railroad, four hundred and fifty-one miles in length, is now one half completed, and may be brought into use in 1844, if prosecuted with the same energy as heretofore. The enlargement of the Erie canal is one half finished; nearly all its mechanical structures having been already replaced with works of great strength and durability, and it may be finished within three years, if prosecuted with due diligence. The Auburn and Rochester railroad has been brought into profitable operation; portions of the Long Island railroad, nearly half of the Genesee Valley canal, and the eastern section of the New York and Erie railroad, have been opened, and are now usefully employed. Our railway communications were extended one hundred and sixty miles within the last year, and their present aggregate length is seven hundred and forty-seven miles; and the total length of our canal navigation is eight hundred and

three miles. Meanwhile, enlightened citizens of this state and of Pennsylvania have opened an active and prosperous exchange of gypsum, salt, coal, and iron, by the Chemung canal, and by the Ithaca and Owego railroad. There is reason to expect that the continuous line of railroad, now reaching from Albany to Batavia, will be extended to Lake Erie within the year; while the citizens of Albany and Boston have connected our interior thoroughfares with the system of similar works in the eastern states consisting of one hundred and fifty-two miles of canals, and eight hundred miles of railways; thus opening to us facilities for social intercourse with the people of those prosperous communities, and convenient access to their manufactures, granaries, seaports, and fisheries. This important union of the two great northern systems was regarded as marking an era in the progress of internal improvement, so important, and excited so deep an interest, that the governors and legislatures of the states whose combining enterprise had secured the auspicious result, assembled at Springfield, in Massachusetts, a point equi-distant from their respective capitals, and there exhibited the spectacle, no less sublime than novel, of the governments of two communities, represented by their executive and legislative authorities, uniting in mass to exchange felicitations upon the completion of works which guarantied domestic tranquillity, insured their safety from external aggression, and bound their citizens, already allied by common blood and common language, in perpetual bonds of commercial, political, and social union.

Agricultural improvement did not engage public attention until after the Revolution. An association was instituted in 1791, for the promotion of agriculture, arts and manufactures, and was incorporated in 1793. Among the founders were John Jay, Robert R. Livingston, George Clinton, Samuel L. Mitchill, Ezra L'Hommedieu, Egbert Benson, John M'Kesson, Samuel Jones, Thomas Tillotson, Aquila Giles, Philip Van Cortland, Edward Livingston, John Thurman, Simeon De Witt, Horatio Gates, and Richard Varick. The name of De Witt Clinton appears in the catalogue of 1798. The transactions of the society contain many excellent papers, and exhibit the then condition of agriculture. The society found the art of culture without method. No sufficient means of diffusing proper intelligence existed. Although the publica-

tions of the society had only a limited circulation, yet they stimulated inquiry. The low condition in which agriculture was found, when these efforts commenced, may be learned from a report to the British board of agriculture, made by William Strickland, in 1794, after extensive travel in this state. "The course of crops," says he, "is as follows: First year, maize or Indian corn; second, rye or wheat, succeeded immediately by buckwheat, which stands for seed; third, flax or oats, or a mixed crop; then a repetition of the same thing, as long as the land will bear anything, after which it is laid by without seed for old field: Or, burn the woods (that is, clear the land from timber); then, first, wheat, second, rye, then, maize for four or five years, or as long as it will grow; then, lay it by, and begin on fresh wood land; or, burn the woods; then wheat four or five years; then one or two of maize, or as long as it will grow; then lay by four or five years for old field, without seeds. * * * * * * Manure is scarcely made use of, but what little is collected is given to the maize, which requires every support that can be given it. Clover is just beginning to be cultivated, in consequence of which good pasture and plenty of hay take the place of old field, and by the use of gypsum astonishing crops are obtained. The average produce of wheat in New York has been stated to me, by very intelligent persons, at twelve bushels per acre; which agrees with the general opinion, and I believe is as high as it ought to be stated. The average of Dutchess county, which, under a proper cultivation, would be a most productive as it is a most beautiful county, has been stated at sixteen bushels; twenty bushels per acre are everywhere a great crop. The average of maize may be about twenty-five bushels; thirty bushels per acre is a great crop. With such agriculture as has been stated, it is not to be wondered at that the produce should be so small, and yet it will be found that the average of this state is superior to that of any other in the Union. * * * * * The wheat of New York is esteemed the best in the United States, and that grown on the banks and branches of the Mohawk, the best in the state."

To this graphic sketch it must be added, that farmers, at the period referred to, were destitute of proper implements of husbandry. The cast-iron plough had not been invented; and, not to mention more important instruments, now considered indis-

pensable, the horse hay-rake, the thrashing machine, the roller, and the cultivator, were unknown; or if any of them had been invented, they were so imperfect and so little used as to produce no effect on the general state of agriculture. To understand the progress since made in the art of cultivation, as well as to mark the existing defects in our system, we must consider separately subjects which, when combined, constitute the basis of improved tillage. In all new countries, where the soils abound in the elements of fertility, manure is undervalued. No care is bestowed in preserving and using it, until diminished crops, from an impoverished soil, expose the error which has been committed. Although this error has been somewhat checked in a portion of the state, it still prevails in the newer regions where the natural fertility seems to be inexhaustible. Nevertheless, the contrast in this respect to the picture before presented, is full of encouragement. Barns and yards are now constructed with a view to the accumulation and preservation of manure, and extensive experiments have been made to ascertain the manner in which the greatest possible benefit can be derived from its use. Discrimination prevails in the application of whatever is used for that purpose, to the different species of plants. Indian corn and roots are now cultivated with the immediate application of fresh manures, while the grain crops are cultivated upon grounds previously prepared, by incorporating the nutriment with the soil. Several substances are now extensively used as manure with beneficial results, such as poudrette and peat, and especially gypsum, which, although fifty years ago known to be a stimulant to vegetation, was regarded as operating to exhaust the fertility of the soil. More gypsum is now prepared and sold in the counties of Onondaga and Cayuga alone, than twenty years since was used throughout the whole state. It has been found by experience that the deep ploughing, and complete pulverization, now performed with ease by means of improved instruments, expose the soil more completely to the action of the atmosphere, and furnish a better range or pasture for the roots of plants, and thus operate favorably in regard to both the certainty and abundance of production. The present mode of draining lands already capabable of cultivation, is wholly a modern improvement; that process having heretofore been confined to swamps and marshes. The sub-soil plough has been invented with express reference to

freeing soils from water and deepening them, without bringing to the surface the sub-soil which is unfit at first for purposes of vegetation. Our agriculturists have also learned that the mechanical mixture of the earths, by effectual ploughing, conduces to fertility.

But in no respect has there been a more decided advance in husbandry, than in the attention paid to the rotation of crops. The practice of exhausting land with a succession of similar or varied crops, and then "laying it by for old field," is no longer known. The importance of an alternation of crops with a seeding of grasses, as a part of the rotative system, is universally acknowledged, and has not only been demonstrated by scientific theory, but is now generally approved and adopted; and a system of rotation, in which crops cultivated with the hoe, alternate with the grains, has been recently found an economical substitute for the former process of summer-fallowing. A great advance in farming has been effected by the introduction of root crops into field culture. It is true that the labor of cultivation is expensive, but it is abundantly repaid by increased production, and the superior condition in which the soil is preserved.

Our farmers have generally been very negligent in regard to improving the breed of domestic animals. Recently, however, the efforts of a few public-spirited persons in introducing cattle, swine, and sheep, from improved stocks in Europe, have been crowned with high success. The race of horses has been less improved. It is to be hoped that the time has passed when efforts in this important department of agriculture must encounter popular prejudice and ridicule. In England the advance in weight of cattle, sheep and lambs, has averaged at the Smithfield market, as estimated by different individuals, at different times, as follows: In 1810, cattle, twenty-six stone six pounds; 1830, thirty-nine stone four pounds; 1840, forty-six stone twelve pounds; in 1810, sheep and lambs, two stone; 1830, three stone eight pounds; 1840, six stone six pounds. Although it can not be affirmed that an equal advance has been made here, yet very beneficial effects have resulted as well from the greater care practised in feeding and raising stock, as from the introduction of improved breeds from abroad. The merino blood in sheep has been so extensively diffused since its introduction here in 1809, that it is supposed none of the former race of that animal

remains unmixed in the country. Among the animals which have been introduced are the Short-Horns, Hereford, Devon, and Ayrshire cattle; the South-down, Leicester, and Coteswold sheep; the Berkshire, Irish-grazier, and Kenilworth swine; and pure bloods or crosses of some of these animals are found in every county, if not in every town in the state. At the present time, thirty-five bushels of wheat per acre is not considered a great crop, and the product frequently reaches forty and even fifty bushels. Seventy-five or eighty bushels of corn per acre is not an extraordinary yield. We can not speak with confidence of the increase of root crops; since, with the exception of the potato, all culture of that kind is still in its infancy. It is much to be regretted that provision has not hitherto been made for obtaining statistics concerning the quantity of land under cultivation, and the number of acres devoted to particular crops and their extent; since the information which might have been thus derived would have been not merely useful in ascertaining the present condition of agriculture, but eminently conducive to its future improvement.

The chief step in the improvement of the plough, was the invention by Jethro Wood, which consisted in substituting in the construction of that instrument, cast-iron for wood and wrought-iron. The new plough thus produced was more manageable, and more easily drawn; and the apprehensions that its strength would not be found sufficient to resist the power applied to draw it, were ultimately found to be groundless. The utmost skill of mechanism has also been applied in ascertaining the form best adapted to equalize the friction and resistance with the work to be performed. Land is now more perfectly and quickly tilled with the labor of two horses, than with double that power applied to the implement before in use. Moore's plough, for use upon an inclined surface, performs its work with as much ease and completeness as similar labor is performed upon a plane. The thrashing-machine, a modern invention, has already become indispensable to the farmer. With the horse hay-rake in the meadow, labor is performed equal to that of six men; while as a gleaner of the harvest-field, its use annually more than repays its cost. The cultivator has greatly reduced the expense of producing Indian corn. Modern improvements of the harrow have diminished the weight of that instrument, and given it greater

efficiency in pulverizing the soil. The heavy-wrought hoe, and the clumsy three-pronged iron fork, have given place to the steel-plate polished hoe, and to the steel fork with four or six tines. We have machines which, with the application of horse-power, clear in a perfect manner ten or fifteen acres of grain per day; and drill-barrows, which have reduced the labor and waste of sowing and planting. There has been a marked improvement in the quantity and quality of fruits: Our farmers are not all of them satisfied now, as formerly, with the apple-orchard, but have their fruit-gardens, in which, with the arts of grafting, inoculating, and transplanting, fine varieties of pears, plums, cherries, and other exotic and domestic fruits, are produced. The dwellings of our farmers are now much less frequently than heretofore, constructed as if magnitude was the most important object in their erection. Farm-houses may now be found in all parts of the state, combining elegance with comfort and convenience, and refined taste is manifested in the planting and preservation of shade-trees. The location and the adaptation of barns and other outbuildings are now especially regarded.

While the society of 1793 gave to agriculture the impulse which has resulted so propitiously, it is now apparent that that institution was defective in omitting to establish fairs, or gatherings, in which farmers and patrons of the art might exchange friendly greetings, and become acquainted with improvements of tillage and implements. In 1819, under the administration of De Witt Clinton, and chiefly in consequence of his recommendations, an act was passed, appropriating ten thousand dollars annually, for four years, to improve agriculture, the arts, and manufactures. A board of agriculture was established, and provision was made to induce the organization of societies throughout the state. The anniversaries of these institutions were the farmers' holydays, when lectures and addresses were delivered, and premiums were awarded to those who produced the finest animals, the largest and best crops, the most useful inventions, and superior domestic fabrics; but the societies soon languished and became extinct. The chief fault of the law of 1819 was that it did not hold out sufficient inducement to voluntary effort. The distribution of the public money was unconditional, and when it ceased the societies were without funds. Nevertheless the act of 1819 was followed by very beneficial

results. Among these were the improvement of the breeds of domestic animals, the invention of many useful implements of husbandry, and the introduction of new methods of culture. In 1841, a new effort was put forth by the legislature. An appropriation was made of eight thousand dollars annually, for five years, to the State Agricultural Society, the American Institute of New York, and societies in the other counties in the state; on condition, however, that they should respectively devote to the improvement of agriculture, funds, otherwise acquired, equal to the sums contributed from the treasury. The effects of this beneficent law are already seen in the interesting volume containing the transactions of the state agricultural societies for 1841, in the general attention to agricultural science, and in the annual exhibitions and fairs of the state agricultural society, and the several county associations.

Agricultural journals also, recently established, have contributed much to the promotion of that important object. Among those in this state which have exerted the most efficient influence, the Ploughboy, by Solomon Southwick, the Cultivator, to which the late Jesse Buel assiduously devoted the energies of his philosophic mind, and the Genesee Farmer, edited for many years by Luther Tucker and Willis Gaylord, and now conducted with equal ability by Henry Coleman, have been eminently successful. These journals have not merely diffused information concerning the processes of agriculture, but they have assigned to the farmer his proper position and just influence in society, and shown him the importance of intellectual acquirement. They have elevated the occupation in popular respect to the dignity of a profession, and it is no longer regarded as one of toilsome service, but as one of true honor, enjoyment, and usefulness. Here too, as in Europe, agriculture has advantages from a more intimate connection with science. To Sir Humphrey Davy belongs the honor of making chemistry subservient to the art. It now seems strange indeed, that while every process in the growth of plants, from their germination to their maturity, is purely the result of chemical action, scarcely an inquiry was bestowed upon the development of that action, until it engaged the attention of that philosopher. Davy was followed by that more profound investigator, Chaptal, and he by Liebig and Johnston. The works of those authors, together with Dana's volume on manures, which is of even

greater practical usefulness, have now attained very general circulation; and though they contain many theories which have yet to undergo the test of more accurate investigation, they have already opened to our citizens a new and most interesting department of science. The district-school library has afforded facilities for introducing our farmers, in every school-district in the state, to an intimate acquaintance with all that is valuable in these works.

An opinion generally prevails that production is altogether greater in Great Britain than here, in proportion to the quantity of improved land, and to population. The number of improved acres of land in the state of New York is ten millions;* in Great Britain, ninety-eight millions. This state annually produces thirty-nine millions of bushels of wheat, barley, oats, and rye. Great Britain produces two hundred and sixty-two millions. New York produces two millions of cattle, and five millions three hundred and eighty-one thousand sheep. Great Britain produces ten millions of cattle, and forty-four millions of sheep. It thus appears that New York is more productive, in proportion to the quantity of improved land, than Great Britain. The comparison, however, would not hold good if instituted with the strictly agricultural districts of England. The United States produces an average of eighteen and a half bushels of grain for each person, while Great Britain produces in the proportion of twelve bushels for each person. But it must be remembered, that in addition to the grains which have been already mentioned, and which are common to both countries, the United States has a bread crop consisting of four hundred millions of bushels of Indian corn, of which the state of New York produces eleven and a half millions, while Great Britain has no corresponding crop adapted to human sustenance. The United States produces twenty-one millions of swine, a larger number than is to be found in all Europe. Of these, two millions are produced in this state; and this, compared with similar productions in Great Britain, increases the proportion of this state in productions adapted to human sustenance. It may be useful to place on record for future reference, as well as to excite attention to the importance of agricultural statistics, an account of the annual productions of the state as derived from the recent census, which, although not altogether reliable for

* In 1850, the number of improved acres was 12,285,077.—*Ed.*

accuracy, is still the nearest approximation to the truth that can be made:—

Bushels of wheat	12,309,041
" barley	2,301,041
" oats	21,896,205
" rye	2,723.241
" buckwheat	2,325,911
" Indian corn	11,441,256
" potatoes	30,617,000
Tons of hay	3,472,118
" hemp and flax	1,508
Pounds of silk cocoons	3,425
" sugar	11,102,070
Gallons of wine	5,162
Pounds of wool	9,845,295
" hops	447,250
Pounds of beeswax	52,795
Horses and mules	474,543
Neat cattle	1,911,244
Sheep	5,118,777
Swine	1,900,065
Value of poultry	$1,153,413
" dairy products	$10,496,021
" home-made family goods	$4,636,547
" productions in market gardens	$499,126
" nursery and florist produce	$75,980

If, in a survey of the progress and present condition of agriculture, we find in it many errors of theory to condemn, and many absurd prejudices and practices to be removed, we also find grounds to hope for its continual advancement. It is a science which appeals to us not merely by our desire to increase the public wealth, enlarge the public intelligence, and elevate the standard of public virtue, but also as the surest guaranty for the perpetuity of that policy of peace and domestic contentment which is indispensable to the existence of democratic institutions.

Horticulture was practised as a merely useful art from an early period. A great variety of fine fruits and plants was introduced soon after the war of the Revolution, by William Prince and James Bloodgood, the proprietors of two of the oldest and most extensive nurseries in the state. Many of our citizens, whom pleasure or business called abroad, sent home rare and valuable varieties of trees and plants. Chancellor Livingston, and other members of the same family, took especial pains to introduce seeds of plants likely to prove desirable here, and the trees thus planted, among which are many fine varieties of cherries and other fruits, may still be seen at the manor garden in Clermont.

The New York Horticultural Society was founded by a combination of amateurs and practical gardeners, in 1818. The first president was Thomas Storm, and among its most efficient members were Dr. Hosack, De Witt Clinton, Dr. Mitchill, and Martin Hoffman; and also Messrs. Wilson, Bridgeman, and Hogg, who were practical gardeners. Under the fostering care of this

society, horticulture acquired a rapid growth. The New York Farmer and Horticultural Repository, edited by S. Fleet, one of the first gardening newspapers, was an organ of this society.

The Domestic Horticultural Society was established in western New York in the year 1828. John Greig, of Canandaigua, was its first president; and among its earliest and most valuable members was David Thomas, of Cayuga, before mentioned as an engineer on the Erie canal. Mr Thomas is a scientific and practical cultivator. A society was established at Newburgh during the same year, and another at Albany in 1829. The late Jesse Buel was the first president of the latter, and although mainly distinguished as an agriculturist, contributed much, both by his writings and by means of a nursery which he established, to promote the increase of horticultural knowledge in the northern and western portions of the state.

At the present time the taste for horticulture is very generally diffused, and particular departments are assigned to the subject in the annual exhibitions of the American Institute in New York, and the State Agricultural Society. There are five societies devoted to its interests, and no less than twenty commercial gardens or nurseries; the most extensive general nurseries at present in the Union being those of Messrs. Wilcomb & King (formerly Bloodgood's), at Flushing, L. I., and Messrs. Downing, at Newburgh.

The "Economy of the Kitchen Garden," by William Wilson, the first original work on the subject published in the state, appeared in 1828; and "A Short Treatise on Horticulture," by William Prince, in the same year. Since that time, the "Gardeners' Assistant," by Thomas Bridgeman, has gone through eight editions. "A Treatise on the Vine," published in 1830, and the "Pomological Manual," in 1831, by William R. Prince, have been among the most useful and interesting works published in the country. Mr. Loudon's valuable gardening works have had considerable influence in diffusing horticultural knowledge, in the absence of native treatises better adapted to our climate; and the gardening works of English authors still have a large circulation in the state. Nevertheless, horticulture, as an art of design, has received very sparing attention. Fine foreign trees and plants have been cultivated in many places with success, but examples of elegant arrangement have rarely occurred. The

late M. A. Parmentier, of Brooklyn, L. I., who emigrated from Holland and established a botanical nursery (since destroyed), first attempted to introduce the natural style of laying out grounds. One of the best specimens of his taste is the seat of the late Dr. Hosack, at Hyde Park, on the Hudson.*

During the past year a desideratum in horticulture has been supplied by "A Treatise on Landscape-Gardening," with a view to the improvement of country residences, by A. J. Downing; and more recently we have been favored with a volume entitled, "Designs for Cottage Residences," by the same author.

Civil engineering has been admitted to rank as a liberal profession within our own times, both here and in England. Canals and railroads have been constructed so rapidly, that it would be almost impossible to distinguish among the engineers, and award to each the merit justly due. We have mentioned a discovery of valuable hydraulic cement. We may add, that very accurate knowledge has been obtained of the comparative strength, durability, and economy of materials, and that a distinguishing characteristic of our public works, is the nice adaptation of means to the ends to be accomplished.

The aqueduct by which the city of New York is supplied with water, will be an enduring monument, and a description of that work will, perhaps, convey the best information which can be given of the present condition of mechanical science. The conduit commences at the Croton river, in Westchester county, where a dam has been constructed, raising the water of that stream 40 feet above its natural level, and 166 feet above mean tide. The aqueduct is prolonged down the valley of the Croton to the shore of the Hudson, thence through the villages of Sing-Sing, Tarrytown, Dobb's Ferry, and Yonkers, where, leaving the Hudson and crossing the valley of Sawmill river and Tibbitts brook, it gains the summit between the Hudson and East rivers, and continues on that summit to the Harlem river, a distance of 32·88 miles of continuous masonry. Iron pipes are then laid 1,450 feet, on an arched bridge, across the valley of the Harlem river, at an elevation of 114 feet above the high tide. After crossing the valley, the aqueduct of masonry is resumed and

* Notes on Agriculture were received from Willis Gaylord, Esq., and notes on Horticulture from A. J. Downing, Esq.

continued two miles to the Manhattan valley, which is passed with iron pipes, descending 102 feet to the bottom of the valley, and continued rising again to its opposite side, the distance across the valley being 0·792 mile. The masonry conduit is again resumed, and crossing the Asylum ridge and the Clendinning valley, is continued 2·173 miles to the receiving reservoir at Yorkville. This basin is 1826 feet long and 836 feet wide, and including its embankments, contains an area of thirty-five acres divided into two parts; thence iron pipes are laid beneath the surface of streets 2·176 miles, to the distributing reservoir at Murray hill, three miles from the City hall.

This reservoir is 420 feet square, and covers four acres. It is divided into two equal parts, and has an average elevation of 44·05 feet above the level of the adjacent streets. The length of the aqueduct, including the iron pipes and reservoir, from the Croton dam to the receiving reservoir, is 45·562 miles; and including the elevated surface of the Croton river, and the large mains conducting the water from the distributing reservoir through the central parts of the city, the entire length is 50 miles, of which the masonry conduit constitutes 37·067 miles. The rocks through which the line of the aqueduct passes are two marble quarries in Westchester, and for the residue of the route gneiss of many varieties. A large portion of the open cutting, and nearly all the tunnel cutting, have been made through rocks, more than 400,000 feet of which have been excavated. The formation of the ground is very irregular. There are on the line sixteen tunnels, varying in length from 160 feet to 1263 feet, and being in aggregate length 6,841 feet. The height of the ridges above the great level at the tunnels, ranges from 25 to 75 feet. In Westchester county, the line of the aqueduct is crossed by twenty-five streams, at depths varying from 12 to 70 feet below the grade line. Besides these there are numerous other brooks and valleys of less depth, over which culverts are constructed. The most important valleys on the Manhattan island, over which the aqueduct passes, are the Manhattan valley, Clendinning valley, and Bowne's valley.

The bottom of the aqueduct is an inverted arch; the chord or span line is 6 feet 9 inches, and the versed sine 9 inches; the masonry of the side walls rises four feet above the springing line of the inverted arch, with a bevel of one inch to a foot rise, or

four inches on each side, which makes the width at the top of the side walls 7 feet 5 inches. These walls form the abutments of the roofing arch, which is a semicircle, having a radius of 3 feet 8½ inches, or a chord line of 7 feet 5 inches. The greatest interior width of the aqueduct is 7 feet 5 inches, and the greatest height 8 feet 5½ inches. The area of the interior is 53·34 square feet.

The plan, dimensions and kind of masonry, are as follows: In excavation, a bed of concrete masonry is laid down as a foundation; it is laid level across the bottom, 3 inches thick at the centre of the inverted arch, and curved on its upper surface to form a bed for the arch, which brings it 12 inches thick at the spring line, and is carried 3 inches thick under the side walls, or abutments. The abutments are 2 feet 8 inches thick at the spring line of the inverted arch, and 2 feet at the top or spring line of the roofing arch. The inverted arch is of brick 4 inches thick; the roofing arch is also of brick 8 inches thick. The abutments or side walls are of rubble stone, with a brick facing of 4 inches thick. Spandrels, of stone, are carried up solid from the exterior angle of side walls on a line that is tangent to the arch. When the bed of concrete is formed for the inverted arch, a heavy course of plastering is laid over it, on which the arch is laid. When the stone work of the side walls was up, the face that received the brick lining had its irregularities filled with successive courses of plastering, and finally a uniform course of a quarter of an inch in thickness over the whole, in front of which the brick facing was laid up. A course of plastering was also put over the roofing arch. The concrete masonry was formed by mixing one part hydraulic cement, three parts clean sand, and three parts fine broken stone. The masonry was all laid up in hydraulic cement. The mortar for the stone work was composed of one measure of cement to one of clean sharp sand; and that for the brick and plastering consisted of one part of cement to two of sand.

The area of a cross section of the masonry is,

Concrete masonry,	4,605	square feet.
Stone inside walls,	21,572	"
Do. in spandrels,	2,690	"
	28,867	
Brick in arches and side facing,	13,658	square feet.
Total,	42,525	"

In embankment the concrete masonry is laid on foundation walls, has one foot extra thickness and three feet in extra width. The base of the side walls is also increased, and the proportion of cement to sand in concrete and mortar for stone work, is 1 to 2½ feet.

The proportion of embankment to excavation on the line of the aqueduct, is about as one to eight. The aqueduct is covered with earth of sufficient depth to protect it from frost. To pass streams, there are one hundred and fourteen culverts, the aggregate length of which is 7,959 feet, and varying in span from 1½ feet to 25 feet. There are five road culverts from 1 to 20 feet span. All the culverts are constructed in the most improved manner, laid in hydraulic cement.

There are thirty-three ventilators, to give free circulation of air through the aqueduct. They rise fourteen feet above the surface of the ground, tapering toward the top, and are of circular form, constructed of well-dressed stone, and have an aperture of fifteen inches in diameter: they are placed at a distance from each other of one mile.

There are six waste-weirs, constructed of well-dressed stone, having cast-iron gates and gate frames fitted to stone jambs and lintels. The frames are faced with brass for the gates to work against. The gates are operated by a wrought-iron screw rod, with a brass nut working in a cast-iron socket. The water falls from the gates into a well, and is carried off through a culvert. The waste-weirs are protected by stone buildings with brick arch roofs.

The dam in the Croton river, as first constructed, was provided with a waste-weir 90 feet wide, which, in the high flood of January, 1841, proved insufficient to pass the water, and a breach was made in the embankment about 200 feet long. This breach was then filled by a structure of hydraulic stone masonry, adopting 180 feet thereof as an additional waste-weir. The greatest height of the weir of the dam is 40 feet above the low-water mark, and 55 feet above the bed of the river. The width of masonry at low-water line of the river is 61 feet. The form on the lower face commences on a curve described by a radius of 55 feet, and continues to within about 10 feet, of the top, when a reversed curve, on a radius of 10 feet carries the face over and meets the back line of the wall. The back line is carried up vertically, with

occasional offsets. The main body of the work is laid up of rough stone; the curve face, of large and closely-cut stone with four heavy courses at the bottom dovetailed together; the joints cut to the line of radius of curve. Above the masonry, an embankment of masonry is filled in, in width 275 feet on the bottom, with a slope of 1 to 5 on the up-stream face. The north end of the new weir is terminated by an abutment which rises 12 feet above it.

From the toe of the masonry an apron is extended 35 feet, composed of hewn timber, well-secured, and filled for 16 feet from the stone work, with concrete masonry; and the remainder with loose stone, and the whole covered with a course of six-inch white-elm plank. A second apron is made, extending 30 feet further. At 300 feet below the main dam is a second dam nine feet high, which sets the water over the apron of the main dam, and thus forms a pool to check the water as it falls over the weir. About 120 feet of the foundation of the dam is of concrete masonry, laid down on a very firm hard pan, and the remainder upon timber piers, the spaces between which are filled with concrete masonry. The dam sets the water of the river back about five miles, and forms a reservoir covering about 400 acres.

The gateway which guards the entrance to the aqueduct, is placed on the solid rock, in a situation not exposed to the floods. The gate chamber is provided with a double set of gates; one set of guard gates set in cast-iron frames; the other, a set of regulating gates made of gun metal, set in frames of the same material. The gates are all 18 by 40 inches, and there are nine in each set, and they are operated by means of wrought-iron screw-rods. The gate-chamber and bulkheads are constructed of well-dressed masonry laid in hydraulic cement. The water is conducted from the reservoir into the gate-house by a tunnel cut 180 feet through the rock, and flows into the bulkhead at the upper end of the tunnel from a level averaging 10 feet below the surface of the reservoir. The builders of this dam were M'Cullough, Black, M'Manus and Hepburn.

The Sing-Sing kill, the bottom of which is 66 feet below the grade line of the aqueduct, is crossed by a bridge resting on a single arch, of 88 feet span and 33 feet rise. The form of the arch is an oval drawn from five centres. The bridge is con-

structed of well-dressed masonry laid in hydraulic cement. The builder was Andrew Young, of Philadelphia.

The width of the Harlem river, where the aqueduct crosses it, is 620 feet at ordinary high-water mark. The shore on the southern side is a rock rising from the water's edge, at an angle of about thirty degrees, to a height of 220 feet. On the northern side a strip of table-land forms the shore, and extends back from the river four hundred feet to the foot of the rocky hill, which rises at an angle of about twenty degrees, to the level of the aqueduct. The table-land is elevated about 30 feet above the river. The channel of the river to which the water is reduced at very low tides, is 300 feet wide, and the greatest depth is 16 feet.

The bridge which is now in progress of construction, crosses this valley on eight arches, each of 80 feet span, resting on piers that are (at each extremity and in the centre) twenty feet wide at the spring line of arches, with intermediate piers that are 14 feet wide at the spring line. On the south of this range of large arches, there is one, and on the north, there are six arches, each of 50 feet span, resting on piers seven feet wide at the spring line, and two abutments that terminate the arch work of the bridge. From the abutments a continuous line of wall of dry stone work is extended to the gate chambers on each side. The length of the bridge is 1450 feet. The height of the river pier above high-water line, is 60 feet to the spring of the arches, and 95 feet above the lowest foundation. The arches are semicircular, and the height 100 feet to the soffit or under side at crown; to the top of the parapets 114 feet above ordinary high water, and 149 above the lowest foundation. The width on the top of the parapets is 21 feet. The space between the parapets is arranged to receive and protect from frost two cast-iron pipes, each four feet in diameter, and lying 12 feet below the grade line of the aqueduct, and connected at each end of the bridge with the masonry aqueduct by gate-chambers. To make the capacity of the pipes for conveying water equal to that of the aqueduct, an extra fall of two feet has been given across the bridge, and the aqueduct on the southern side is depressed two feet below the grade to accommodate this arrangement. The utmost care and skill have been bestowed in securing durable foundations for the piers. The material of the bridge is well-dressed granite. While the bridge remains unfinished, the water is conveyed in iron pipes in the

shape of an inverted siphon. The immense and expensive structure which has been described, was deemed necessary, by the legislature, to prevent obstruction of navigation of the Harlem river.

The greatest depression of the Clendinning valley is 50 feet below the top of the aqueduct, and the valley is 1,900 feet across. Streets cross the line of the aqueduct in this valley at right angles. The aqueduct passes the valley on a bridge, and archways are constructed over three of the streets. The archways for each street are one for carriage-way of thirty feet span, and an arch on each side for side walks of ten and a half feet span. The style of masonry is the same as that of the Sing-Sing bridge. That part of the bridge which has no provision for street arches is composed of a continuous wall of masonry, carried up on a bevel of one twelfth its rise to the grade line of the aqueduct, where it is thirty feet wide. The outside or face of this wall, for one foot in breadth, is laid in hydraulic mortar, and the remainder is dry masonry, consisting of courses of large stone, with the insterstices thoroughly filled with small broken stones.

The receiving reservoir is formed with earth banks, the interior having regular rubble walls, and the outside is protected by a stone wall laid up on a slope of one horizontal to three vertical; the face laid in cement mortar, and the inside dry. The inside is protected by a dry slope wall laid on the face of the embankment, which slopes one and a half horizontal to one vertical. The embankments are raised four feet above the top water-line and vary in width from eighteen to twenty-one feet. Vaults or brick archways are constructed, in which iron pipes are laid, so arranged that the pipes from the northern division of the reservoir connect with those of the southern division, and thence pass off to the distributing reservoir, and to supply the adjacent districts. The vault on the eastern side is 540 feet long and is 16 feet span; that on the western side is 400 feet long and 8 feet span. The pipes are all provided with stop-cocks, and so arranged that they can receive water from either division, except one pipe from each division leading to the distributing reservoir. A pipe is put through the division bank with a stop-cock, to allow the water, or not, to pass from one division into the other. The aqueduct intersects the reservoir at right angles with its westerly line, and 252 feet south of the northwesterly corner. At this

point a gate-chamber is constructed, with one set of gates to pass the water into the northern division, and another set to pass it into a continued conduit of masonry constructed within the embankment of the reservoir, to the angle of the southern division, which the water there enters by a brick sluice. This arrangement gives the power of directing the water into either division, or both, at the same time. A waste-weir is constructed in the division bank. It has not been deemed necessary to complete the excavation of this reservoir. It has at present a capacity for 150,000,000 imperial gallons.

The distributing reservoir is built upon ground higher than any part of the city south of it. The walls are built upon a foundation sunk five feet below the grade of the streets, and are of hydraulic stone-masonry, constructed with openings, to reduce the quantity of masonry and give a more enlarged base. The openings are made by an exterior and interior wall, connected at every ten feet by cross-walls, which are carried up to within seventeen feet of the top, and then connected by a brick arch thrown from one to the other, and the spandrels between them levelled up solid, and a course of concrete put on the whole six inches thick, which reaches a level ten feet below the top on which the exterior wall is carried up single to the top. The exterior wall has a bevel of one to six, and is uniformly four feet thick from the bottom to the top of the connecting arches. The inner wall is carried up plumb with off-sets; the lower section six feet thick; the middle section five feet thick. The span between the exterior and interior walls, at 41 feet below the top, is 14 feet, or 24 feet from the outside of exterior to the inside of interior walls, and the span between them at the spring of the connecting arches, in consequence of the bevel of the exterior wall, is reduced to 9 feet and 9 inches; and from outside of exterior to inside of interior walls, 17·75 feet. The cross-walls are four feet thick at the bottom, and have an off-set of six inches on each side, at eight feet below the spring-line of the connecting arches, and have openings at a suitable level near the bottom, to allow the construction of drains, and to permit persons to pass in and examine the work.

On each corner of the reservoir, pilasters 40 feet in width are raised, projecting four feet from the main walls, and in the centre on the streets and on the 5th avenue, are pilasters 60 feet wide, and projecting six feet. The pilaster in the centre on the 5th avenue

rises seven feet above the main wall, and all the others four above. Doors are placed in the central pilasters on 40th and 42d streets, which give access to the pipe-chambers. In the central pilaster an entrance is made by a door to a stairway that leads to the top of the walls. On the outside walls is an Egyptian cornice, which accords with the general style of the work. Inside of the walls of masonry, a thoroughly-puddled embankment of suitable earth is formed, $58\frac{1}{3}$ feet wide at the line of the reservoir bottom, and sloping on the inside face $1\frac{1}{2}$ to 1 per 24 feet high, and making, with the walls on top, a width of 17 feet; the face of the banks is lined with a course of rubble hydraulic masonry 15 inches thick, and coped with dressing-stone. The bottom is an impervious hardpan, on which two feet of puddled earth is laid, and this covered by 12 inches of hydraulic cement. The reservoir is divided into two divisions by a wall of hydraulic masonry; the wall is 19 feet thick at the bottom, $6\frac{2}{3}$ feet at top water-line, and 4 feet at the top. In this wall a waste-weir is placed, with a well of two falls, together 52 feet, from which the waste-water enters a sewer and passes off about one mile to the Hudson. In each division there is a waste-cock to draw the water from the bottom. The reservoir is designed for 36 feet of water, and when full, will stand 115 feet above mean tide. The walls rise four feet above the water-line. An iron railing is to be placed around the walls on the top of the cornice. The capacity of this reservoir is 20,000,000 imperial gallons.

The general declivity of the aqueduct is 0·021 foot per hundred, or a fraction over $13\frac{1}{4}$ inches per mile. The Croton reservoir, which has received the name of Croton lake, is available for 500,000,000 imperial gallons of water, above the level that would allow the aqueduct to discharge 35,000,000 gallons per day. The flow of the Croton river is about 27,000,000 of gallons in twenty-four hours, at the lowest stages. The work was commenced in May, 1837, and has been so far completed that the water was admitted into the distributing reservoir on the 4th of July last. The survey, plans, and estimates of the work were made by Professor Douglass, who was succeeded as chief-engineer by John B. Jervis. The aqueduct has been constructed at the expense of the city of New York, under the direction and supervision of commissioners appointed by the governor and senate. The following persons have been commissioners: Stephen

Allen, Walter Bowne, Benjamin M. Brown, Saul Alley, Charles Dusenbury, William M. Fox, Thomas T. Woodruff, and Samuel R. Childs. The present commissioners are Samuel Stevens, John D. Ward, Benjamin Birdsall, and Zebedee Ring. The cost of the work is about twelve millions of dollars.*

In 1823, a place was assigned to the science of civil engineering in the programme of studies at the United States military academy at West Point. This excellent national institution traces its origin to the recommendation of Washington. It was founded in 1802, and having received especial care and attention under the administration of Jefferson, was enlarged in 1812, on the earnest recommendation of Madison. The school consists of two hundred and fifty cadets, divided into four companies, and taught in the field all the duties of the military profession. They are divided, for theoretical instruction, into four classes, and four years are required to complete the entire course of studies. That course includes mathematics, the French language, English composition, rhetoric, geography, topographical drawing, natural and experimental philosophy, chemistry, landscape-drawing, engineering, the science of war, ethics, constitutional law, infantry tactics, artillery, pyrotechny, mineralogy, and geology.†

Although our civil architecture is open to criticism, yet several of our state and municipal edifices furnish evidence of improving taste. The custom-house, the exchange, the university, and the halls of justice, in New York; the exchange, public edifices, and academic structures, in Albany; and the lunatic asylum at Utica, and the state-prison at Auburn — although they exhibit departures from severe canons, are nevertheless believed to be creditable to the enterprise of our citizens. Not much can be said in praise of the monumental branch. Notwithstanding some puerility of detail, when we compare St. Paul's and the old Trinity with more recent structures, we might infer that sacred architecture was declining. Our domestic architecture has improved with the increase of wealth in private life. While we can not now, or ever hereafter, compare with the palaces of individuals who enjoy hereditary wealth and rank in other countries,

* An account of the Croton aqueduct, prepared by J. B. Jervis, chief-engineer, was received from Samuel Stevens, the president of the board of commissioners.

† Notes concerning the military academy were received from Col. De Russy, U.S.A.

we may safely claim, that for suitableness to our social state, and for all that can minister to domestic convenience and comfort, the edifices of our citizens are not surpassed in any other community.* Our naval architecture may perhaps justly be regarded as a peculiar triumph of American genius. Our packet-ships engaged in foreign trade, and especially the steam palaces which float upon the Hudson river, Long Island Sound, and the lakes, combine the elements of strength and beauty with great speed and perfection of internal arrangements. While the civilized world is in the full enjoyment of the advantages of steam-navigation, the people of New York, at least, need not to be reminded of their obligations to her own eminent citizens, Robert Fulton, John Stevens, and Robert R. Livingston. Experiments on steam-navigation were commenced in 1791, by John Stevens, of Hoboken. He invented the first tubular boiler. His first attempts were made with a rotary engine, for which, however, he speedily substituted one of Watts'. With various forms of vessels, and different modifications of propelling apparatus, he impelled boats. In 1797, Chancellor Livingston built a steamboat on the Hudson, and the legislature granted an exclusive privilege of steam navigation, on condition that he should, within a year, produce a vessel impelled by steam at the rate of three miles per hour. Being unable to perform this condition, the privilege failed. Livingston and Stevens united their efforts with those of Nicholas Roosevelt in 1800, but without success. Chancellor Livingston pursued his favorite object in Paris, where he engaged the efforts of Fulton. Fulton, after a trial of various other apparatus for propulsion, decided that the paddle-wheels possessed the greatest advantage. He then planned a mode of attaching wheels to Watts' engine, and, finding the experiment successful in a trial on the Seine, it was determined by him and Livingston to build a large boat upon the Hudson. He then proceeded to England, and personally superintended the construction of a new engine by Watts and Bolton. This engine was received in New York in 1806, and the vessel prepared for it was set in motion in 1807, the legislature having extended the law. During this time Stevens had persevered in his efforts at home, and only three or four days after Fulton's success was

* Notes on Civil Engineering and Architecture were received from Prof. Mahan, of the United States Military Academy of West Point.

established, Stevens had a boat in motion with the required velocity; and, as his experiments were entirely separate from those of Fulton, he seems justly entitled to divide the honor which, by the popular judgment, is exclusively awarded to Fulton.*

The labors in hydrography of Edmund M. Blunt, and his sons, deserve especial notice. "The American Coast Pilot" was first published in 1796, and was then a small pamphlet of about eighty pages, containing an account of the chief harbors in New England, with sailing directions, and it has been, by labors and additions through forty years, augmented to a volume of about one thousand pages, giving an accurate account and directions for navigating the eastern coast of America, from Labrador to Cape Horn, including that of the West India islands.

While the country, and especially this state, has been steadily rising into great commercial and maritime importance, the government, until 1830, manifested a total neglect of hydrographical science; yet through the persevering enterprise of Mr. Blunt, there are to be found in the "Coast Pilot" as full and complete directions for the navigation of the American coast, as those furnished with the aid of government in other countries.

No actual surveys were made of this part of the American coast, until 1822, when Mr. Blunt surveyed the harbor of New York, and its eastern entrance. In 1827 he extended his surveys to Long Island Sound, and made an elaborate survey of the coasts of that arm of the sea, which has proved to be a work of the greatest utility to commerce. Some estimate may be formed of the extent of this private enterprise, when it is recollected that the coast to be surveyed was two hundred and fifty miles in length, and that many islands and bays are comprehended in the survey.

Since that time, the great triangulation of the coast, by the authority of the federal government, has been extended over the same coast, under the direction of Professor Hasler as principal, and James Ferguson of Albany, and Edmund Blunt of New York, assistants.

The charts used throughout the United States, both of the coast of the United States and the West Indies, are published by E. & G. W. Blunt, and they have entirely superseded the foreign

* Encyclopædia Americana.

charts, being original drawings, continuing the new discoveries and corrections with the general outline adopted in the English charts.

In connection with this subject, it is proper to state that directions have been given for an accurate triangulation of the Niagara river at Niagara falls.

Unhappily there is not in this, nor in any other country, a taste sufficiently general for the study of the useful arts. Occasionally a brilliant invention arrests the attention of mankind, and homage is involuntarily yielded to a discoverer who has contributed to the well-being and happiness of our race. But the laws of mechanics, although fixed, invariable, and easy of comprehension, remain unstudied and unregarded. Neglecting inquiry into the processes by which results have been attained, society is content to pay its tribute of admiration for the results themselves. Inventions are brought into general use, and curiosity concerning the inventor, and the progress of his discovery, ceases altogether; or if, like the printing-press and the steam-engine, the invention marks a new era in the march of civilization, a confused association of the author's name with his invention takes possession of the public mind, and millions repeat his praises without at all inquiring into the justice of the award. Although mechanical inventors are busy among us, we have few trophies of the genius of our citizens besides the application of the steam-engine to navigation. MacAdam, the inventor of the well-known improvement in the mode of constructing common roads, was a native of New York, although his genius received its development in England, whence we have received his invention. Paul K. Hodge has published a work called "The Steam-Engine, its Origin and Gradual Improvement from the Time of Heron to the Present Day, as Adapted to Manufactures, Locomotion, and Navigation," which is held in high esteem. The author has the merit of having invented the steam fire-engine, a machine of great importance in populous cities. James Renwick has written several valuable treatises, among which we may mention. "The Application of the Science of Mechanics to Practical Purposes;" and also a work "On the Steam-Engine." Alexander S. Byrne has published "Observations on the Best Mode of Propelling Ships." William C. Redfield's "Essays on Meteorology," and "The Causes of Hurricanes," have attracted much attention

in that abstruse and unexplored field of science. It must be admitted that he has ably defended his theory in opposition to that of Professor Espy. The labors of Professor Davies in the science of pure mathematics, and those of Professor Mahan in that of mixed mathematics, and its applications in civil engineering and kindred departments, conducted, as they have been, at the United States military academy in West Point, are claimed as a valuable portion of the scientific property of the state. Doctor Nott's improvement of furnaces for burning anthracite coal, has been especially useful in the manufacture of machinery and in the improvement of steam navigation, as well as conducive to health and the comforts of social life. An important and valuable work has just issued from the press, entitled, "A Descriptive and Historical Account of Hydraulic and Other Machines for Raising Water, Ancient and Modern," by Thomas Ewbank, of New York. The author, who is deeply versed in mechanical science, has, by a collection of rare and curious facts in the progress of invention, presented in a spirited yet unaffected manner, attempted to disturb the popular indifference to mechanism, and to invest that science with the interest of history and the charm of romance. His extensive, minute, and accurate account of the more important engines and machines now in use, renders his work exceedingly useful to the student in that department.*

From notices of practical applications of science, we pass to a brief review of the progress of literature, and shall, for obvious reasons, dwell most upon such productions as especially illustrate points in the character, condition, or circumstances of the state. The history of the races which inhabited the American continent previously to the planting of the European colonies, is a vast field imperfectly explored. Ancient fortifications erected anterior to the discovery of America, have been found in all parts of the state. De Witt Clinton, after personal examination, described the ruins of fortifications in Pompey, Onondaga county. In several parts of that town, there are remains of ancient populous settlements. The site of the ruins is on the high ground which divides the waters which flow into Chesapeake bay, from those which seek the ocean through the gulf of St. Lawrence; and the

* Notes on the Useful Arts were received from Rufus W. Griswold, D. D.

formations between this ridge and the shore of Lake Ontario indicate an abrasion of rocks, and a recession of the waters by which the valley has been exposed. The ruins are similar to those found in the interior of the continent; from an examination of which our antiquarians have, with great unanimity, deduced an opinion that a vast population, many ages since, existed on the continent, having large towns, possessing military defences, and pursuing agriculture, and more advanced in civilization than the aboriginal nations which have inhabited the same country since the European discovery. Many interesting relics found in such ruins have been preserved in the Albany Institute, especially utensils made of pottery. There is another class of ruins which furnish traces of visits by Europeans, of which there is no historical account. The Indians found in the settlement of the colony, have no reliable tradition concerning either of these descriptions of ruins. A few rude characters etched upon the rocks are all the enduring hieroglyphics, found in the northern portion of the continent east of the Hudson; and these are unintelligible, although the learned and ingenious Schoolcraft supposes that he has discovered a key to unlock the mystery. Monuments everywhere remain, but they bear no records of the eloquent, the wise, and the brave, who may have flourished in a long lapse of ages. Even the origin of the present aboriginal races is involved in mystery, and the curious and learned are equally divided on the question, whether the ancestors of these races were drifted upon the southern division of the continent, from the islands of the South Sea, or whether they were of Tartar origin, and found their way there by crossing Bhering's straits. Yet another theory derives the aborigines from the Northmen of Europe. This theory is based upon the resemblance of the American Indians to the Esquimaux, and between the Esquimaux and the Laplanders. Dr. Samuel L. Mitchill maintained this hypothesis. Henry Wheaton, now minister of the United States at the court of Berlin, has pursued investigations which, together with those of the Swedish antiquaries, have produced a general conviction that the Northmen visited the shores of New England several centuries before the discovery of America by Columbus; and it is argued that if the bold adventurers in the age of Eric the Red could traverse the North seas from Norway to Greenland, and thence to the American coast, spirits equally brave might have done the

same ages before. Other speculators have attempted to trace the descent of the American Indians from the Canaanites driven from Palestine by Joshua. Grotius and Martyr believed that Yucatan was first peopled by Christian Ethiopians; while some regard those races as descendants of the long lost ten and a half tribes of the children of Israel.*

The first colonial historian of the Six Nations was Cadwallader Colden, and his work is valuable although it reaches only to a very short period subsequent to the peace of Ryswick. The work is certainly good authority as a record of facts, and manifests a benevolent spirit and an inquiring genius. It is especially interesting also because it shows that each of the Five Nations was a distinct republic, while they were all bound in a confederacy with a grand central council at Onondaga. Colden, however, is supposed to have erred in adopting the French opinion, that the Five Nations had only recently occupied the country in which they were found at the time of the discovery of the continent. David Cusick, an educated Tuscarora Indian, about twenty years ago, published a history of the Six Nations, derived from their traditions. This work, which as a merely literary one is without merit, nevertheless establishes the fact, if any reliance can be placed on Indian tradition, that the Five Nations resided in the country now constituting western New York, for a very long period anterior to the first visit of the Europeans. But Cusick's chronology is almost as wild as that of the Chinese or the Hindoos, for he gives accounts of the reigns of a long line of kings, reaching through a period of thousands of years. There are two points, however, in the traditions of the Six Nations which are both curious and important, to wit, the resemblance between their cosmogony and that of the Hindoos, and the fact that the Noachian deluge is incorporated in their legends, as it has been found in those of all the barbarous nations on the eastern continent. A discourse, pronounced before the Historical Society of New York, in the year 1811, by De Witt Clinton, presents the most useful compendium of the history of the Six Nations. Sir William Johnson wrote a series of letters to Arthur Lee of Virginia, upon the manners, customs, and government of the Six Nations, but it is not known that the work is extant. The Reverend Samuel F. Jarvis, formerly of New York, but now of

* Adair, Boudinot, Miller, M. M. Noah.

Connecticut, in 1819, produced a learned and eloquent treatise on the religion of the North American Indians, in the form of a discourse, before the New York Historical Society. William Smith, in his History of New York, has given the history of the Six Nations, but it is little more than a compendium of Colden's writings on the same subject.

The most elaborate and authentic modern work upon the origin of the American red man, and the antiquities of that race, is that recently given to the public by Alexander W. Bradford. His researches and inquiries embrace the wide region from the snow huts of the Esquimaux to the palace of the Incas. His conclusions are, that all the various nations and tribes inhabiting America at the time of its discovery were derived from one primitive civilized source, and that the emigration to this continent proceeded from southeastern Asia through the Indian Archipelago, and across the islands of the Pacific ocean. This theory, however, has yet to abide the test of inquiry.

George Catlin spent several years among the aboriginals of the far west, and his volumes are curious and interesting, regarded as a sketch of the living manners of the inhabitants of the forest. In the department of Indian philology, Albert Gallatin has given us an elaborate and invaluable essay upon the structure of the American languages, illustrating the tongues of fifty-three nations.

William L. Stone has had the felicity to appropriate to himself the department of Indian biography. His first work was "The Life of Joseph Brant, or Thayendanegea." The title, however, does not convey a just idea of the work, which is a complete history of the Iroquois confederacy during the life of the hero. Brant was the leader of the Indian auxiliaries of the British army during the Revolution. The work is rich in historical information, concerning the border scenes of that eventful struggle. The next work, by the same author, was "The Life and Times of Red Jacket, or Sa-go-ye-wat-ha, the Last Great Orator of the Iroquois confederacy. In this work the history of the Six Nations is resumed at the period of the death of Brant, and continued until the late dissolution of the league. The speeches of Red Jacket, preserved in this volume, will through time become more interesting as authentic exhibitions of the rhetorical art, as it existed in a barbarian community. The "Life of the Seneca

White Woman, Called by the Indians Deh-he-wa-mis," by James G. Seaver, is especially valuable for the light it throws upon the history of Sullivan's campaign in the Genesee country in 1779. The affecting story of Wyoming is known to every reader of Campbell's touching and most beautiful poem. But for an authentic narrative of the painful events which the poet celebrated, we are indebted to William L. Stone. William W. Campbell's "Annals of Tryon County" is a valuable contribution to the history of the state, and especially instructive concerning the trials and sufferings of our frontier population exposed to Indian barbarities during the war of the Revolution. Edwin James has given us a narrative, by John Tanner, a Virginian, who was captured by the Indians in his childhood, which abounds in information concerning the Indians in the interior of the continent, and especially their manners, sentiments, and customs. Tanner became entirely assimilated to the Indians, and this interesting book was written from his own lips, and may be deemed, therefore, a production of Indian autobiography. Washington Irving's "Memoir of Philip of Poconoket," a fierce yet magnanimous warrior, celebrated in the annals of Massachusetts, and who fell in a chivalrous effort to drive the intruding white man from the continent, is written with all the benevolent spirit and taste of its accomplished author. Henry R. Schoolcraft, a native of this state, but now a citizen of Michigan, has been a philosophic and enthusiastic student of the languages and unwritten literature of the red men. Besides many important contributions to our reviews, he has given us in his work, under the fanciful title of "Algic Researches," a library of Indian romance, very precious, and such as no other than its author could have gathered and so tastefully arranged. Much assiduity has been manifested in collecting materials for the history of New York.

The "Description of the New Netherlands," by Adrian Vanderdonck, translated by Jeremiah Johnson, abounds in curious and interesting information concerning the early condition of the colony, and its relations with the Indians and with the other provinces.* The earliest English account of the colony which remains is "A Brief Description of New York, formerly called New Netherlands," by Daniel Denton, a small quarto printed in London in

* Notes on Antiquities and the Press were received from the Honorable Gabriel Furman. Notes on Female Biography and Indian History were received from William L. Stone, Esq.

1607. The author informs us that the book was written with the object of giving "some directions and advice to such as shall go there, an account of what commodities they shall take with them, and the profit and pleasure that may accrue to them thereby." There is a copy of this curious work in the state library.

It is perhaps not generally known that the name of the city of New York, which was assumed in 1664 was, in 1673, changed to New Orange. This fact appears from "A View of the City of New Orange, As it Was in the Year 1673, with Explanatory Notes, by Joseph W. Moulton." This pamphlet abounds in very curious and apparently very authentic information concerning the manners, customs, and habits of the period to which it relates. A pamphlet was published in New York, in 1799, entitled, "A Description of the Settlement of the Genesee Country in the State of New York," in a series of letters from a gentleman to his friend. It is valuable, as containing a history of the progress of the settlement of western New York previous to the commencement of the present century. Joseph W. Moulton, about twenty-five years since, associated with John Van Ness Yates, to produce a history of New York, and the excellence of the volume published has caused a very general regret that the purpose of the authors was relinquished.

In 1829, there appeared a work entitled "The Natural, Statistical and Civil History of the State of New York," in three volumes, by James Macaulay. This work, although very comprehensive, was supposed to be inaccurate, and it has not obtained rank as a standard work. William Dunlap subsequently attempted to execute a history of the state, and he collected very valuable materials, but his talents and acquirements were not equal to so ambitious an undertaking. More recently Jabez D. Hammond has published two very interesting volumes, containing the political history of the state of New York, from the adoption of the constitution until 1840. The work is written with candor and with studied accuracy.

"A Sketch of the first settlement of the towns on Long Island," by Silas Wood, is a very valuable and authentic work. "The History of Long Island," by Benjamin F. Thompson, published in 1839, is rich in local incidents and illustrations of public characters. "Sketches of Rochester, with Notices of Western New York," by Henry O'Reilly, published in 1838, contain very

useful information concerning the settlement of the western countries. The publications of the New York Historical Society deserve a conspicuous place among the historical productions of the state. This society was formed in 1804, and received a charter from the legislature in 1809. Among its founders were De Witt Clinton, Daniel D. Tompkins, and Rufus King, Bishop Moore, the Reverend Dr. Hobart, afterward bishop, the Reverend Drs. Millers and Kunrey, Drs. Mitchill and Hosack, and other eminent citizens. The society subsequently received liberal aid from the state. They have collected a large and valuable library of historical works, in manuscript as well as printed volumes, and have already published six volumes of transactions. At the instance of the Historical Society, the legislature authorized the appointment of an agent to visit Europe, and select and transcribe documents in the archives of European states, which might tend to illustrate our colonial history. John Romeyn Brodhead, who was appointed to perform that duty, has, through the liberality of the governments of the Netherlands and of Great Britain, explored the archives of those countries, and collected a mass of valuable official papers, commencing with the discovery of the colony, and reaching to the close of the Revolution. The agent is now in Paris, and is improving the generous permission given him by the king of the French to explore the public offices in that city, for materials for perfecting that part of our history which relates to the wars between the English and French, many scenes of which occurred in the western and northern parts of this state. The legislature also, on the suggestion of the Historical Society, has, within the present year, completed the publication of the legislative history of the state, by giving to the press the journals and correspondences of the Revolutionary provincial congress, the council of safety, and committee of safety. But the attention of our historians has not been exclusively confined to our own state. Francis L. Hawks, under the title of "Contributions to the Ecclesiastical History of the United States," has written the history of the church in Virginia and Maryland. J. Fenimore Cooper's History of the Navy of the United States, is justly regarded as a national work. "Notices of the War of 1812," by John Armstrong, late secretary of war, were published in two volumes.

The life of Philip Schuyler is yet unwritten, if we except the

sketch contained in Chancellor Kent's historical discourse. We have also only a brief eulogistic notice of Chancellor Livingston. The fame of John Jay has been more fortunate, the life of that Christian statesman having been fully, impartially, and elegantly written by his son, William Jay, of Westchester county. We are indebted to that indefatigable national biographer, Jared Sparks, for ample volumes giving us the personal and political history of Gouverneur Morris. John C. Hamilton has produced two volumes, bringing down the life of Alexander Hamilton to the period when the federal constitution was formed. The work is executed in a manner worthy of the subject, and praise can go no higher. Theodore Sedgwick, junior, has given us a very interesting work in the life of William Livingston, a native and long a citizen of this state, afterward governor of New Jersey. Dr. David Hosack wrote an obituary memoir of De Witt Clinton: the work is rather a eulogy than a biography, but the appendix to the volume contains a vast mass of materials illustrating the history of the state during the career of Clinton. James Renwick has written the life of Clinton, in a popular form, and it has found a place in the school district library. To Samuel L. Knapp we are deeply indebted for a life of Thomas Eddy, who, as has been seen, was distinguished in promoting the canal policy, and who for his disinterested and efficient zeal in the cause of humanity, received from his contemporaries the name of the American Howard. He was the projector of the Society for the Reformation of Juvenile Delinquents in the city of New York, under whose government is the House of Refuge; an institution justly pronounced, by De Witt Clinton, the "best penitentiary ever devised by the wit, and established by the benevolence of man." The fame of Robert Fulton found worthy guardians in Cadwallader D. Colden and Professor Renwick. Maryland owes great obligations to Henry Wheaton, of New York, for a memoir which does ample justice to the eloquence, the patriotism, talent and professional learning of her son William Pinckney. It would be supererogatory to speak of the Life of Christopher Columbus, by Washington Irving.

Among the scanty materials for ecclesiastical history which we possess, we refer with pleasure to the Life of the Reverend John H. Livingston, by Alexander Gunn; the Life of the Reverend Samuel J. Mills, a devoted missionary of the Colonization Society,

by Gardiner Spring: and the Life of the Right Reverend John H. Hobart, by M'Vickar, and also a Life of the same distinguished prelate by Berrien.

Among the productions of the prolific pen of the late Robert C. Sands, is a Life of that celebrated naval captain, John Paul Jones. Aaron Burr was a living mystery; his life has been written by Matthew L. Davis, with distinguished accuracy. It is to be ascribed to the peculiarity of the subject that such an account, given with even the partiality of private friendship, has resulted in diminishing the interest which was universally felt in regard to Colonel Burr so long as he lived, and which, perhaps, would have long survived him if his life had remained unwritten. The autobiography of Colonel Trumbull throws light upon some portions of our Revolutionary history, and upon many public characters during that period, as well as upon the progress of the fine arts. Henry C. Van Schaack has performed a filial duty with great propriety in his life of his father, Peter Van Schaack. The writer's object was to vindicate the purity of motive of that eminent lawyer in his neutrality during the Revolution. The work adds very interesting materials for the full history of the great conflict, which yet remains to be written.

The National Portrait Gallery of distinguished Americans, by James Herring, consisting of four volumes, embellished with one hundred and forty portraits, is a work creditable to the literature and to the arts of the country. We can only notice, in passing, De Witt Clinton's Sketch of the Life of Philip Livingston, and the same author's Memoir of the Life of George Clinton, and similar sketches of Dr. Hugh Williamson and Dr. Bard, by David Hosack; of John Wells, by William Johnson; and of General James Clinton, by William W. Campbell. William L. Stone's account of the noted fanatic and religious impostor Matthias, contains many facts which will be useful to the student in mental philosophy. William Dunlap has left valuable materials for biographical literature, in his History of the American Theatre, and also in his History of the Arts of Design.

We must acknowledge and lament our deficiencies in female biography. Still, what works of that kind we possess, are exceedingly interesting. Among these is a memoir of Mrs. Ann Elizabeth Bleecker, published in 1793, by her daughter Margaretta V. Faugeres. We are indebted to Mrs. Grant, of Scotland, for the

Life of an "American Lady," by which designation was intended Mrs. Schuyler, the wife of Colonel Schuyler, of Albany. The work is not without interest as mere biography, but it is also exceedingly instructive concerning the manners and customs which prevailed in the colony during the period which was included in the close of the seventeenth, and the beginning of the eighteenth century. The people of this state will cherish in grateful remembrance Isabella Graham, a Scottish lady, who passed the greater portion of her life in New York, ministering to the poor, and alleviating the sorrows of the afflicted; and who was prominent among the founders of the orphan asylum in that city. A memoir of her life has been written by Divie Bethune. The poet Southey has said that the annals of English literature did not furnish a more brilliant example of precocious genius than Lucretia Maria Davidson. Her biography has been written by Miss Sedgwick. That it has been written well and justly, the name of the authoress is a sufficient guaranty. The genius of Margaret Miller Davidson, a younger sister of Lucretia, at a very early age produced fruits equally ripe, which have been gathered and given to the public by the kind and gentle hand of Washington Irving. We conclude these notes of female biography with mentioning two works recently published, one a Memoir of Lucy Hooper, with Selections from her Poetical Remains, by John Keese. The memoir is a discriminating narrative of the life and character of a young lady of genius, and of deep and pure affections. The other work is "The Missionary's Daughter," being a memoir of Lucy Goodale Thurston, by Mrs. A. P. Cumings. The subject was a daughter of one of the devoted band of missionaries in the Sandwich Islands, whose brief history is affecting and instructive.

Our library of travels is already quite voluminous. At the hazard of omitting many equally deserving of notice, we mention the following: —

Travels in England, France, Spain, and the Barbary States, in 1813, '14, '15, by Mordecai M. Noah; 1819. A Tour from the city of New York to Detroit, by William Darby; 1819. Travels to the Sources of the Mississippi, &c., under Governor Cass, in 1820, by Henry R. Schoolcraft; 1821. Travels to the Central Portions of the Mississippi Valley, &c., in 1821, by the same; 1825. Narrative of an Expedition to the Source of the Missis-

sippi, in 1832, under H. R. Schoolcraft, by the same; 1834. Narrative of the Loss of the American Brig Commerce on the Coast of Africa, in 1815, by Captain James Riley. A Year in Europe, 1818–'19, by John Griscom; 1823. Letters from Europe, &c., by N. H. Carter; New York, 1827. A Year in Spain, by Alex. S. M'Kenzie; Boston, 1829. Narrative of Four Voyages to the South Sea and the Pacific, 1822–'31, by Benj. Morrell; New York, 1831. Voyages Round the World, between 1792 and 1832, by Edward Fanning; New York, 1832. Voyage of the U. S. Frigate Potomac, 1831–'34, by J. N. Reynolds; 1835. A Winter in the West, by a New Yorker [Charles F. Hoffman]; 1835. The Old World and the New, or a Journal of Reflections and Observations, made in a Tour in Europe, by Orville Dewey; 1836. Sketches of Turkey in 1831–'32, by James E. De Kay; New York, 1833. Incidents of Travel in Egypt, Arabia Petræa, and the Holy Land, by John L. Stephens; 1836. Incidents of Travel in Greece, Turkey, Russia, and Poland, by the same; 1837. Journal of an Exploring Tour beyond the Rocky Mountains, 1835–'37, by Samuel Parker; 1838. Incidents of Travel in Central America, Chiapas, and Yucatan, by John L. Stephens; 1841. Biblical Researches in Palestine, &c., or a Journal of Travels in the year 1838, by Edward Robinson and Eli Smith, drawn up by E. Robinson; 1841. Letters from the Old World, by Mrs. Haight; New York, 1840. Letters from Abroad, &c., by Miss C. M. Sedgwick; New York, 1841. Travels in England, &c., by J. Fenimore Cooper. Travels in Switzerland, &c., by the same. Travels in Europe, by Valentine Mott; 1842. The American in Egypt, with Rambles through Arabia Petræa and the Holy Land, during the years 1839 and 1840, by James Ewing Cooley; 1842.

With regard to these works, we may remark, that Schoolcraft's publications are among the best accounts of the western wilderness; that M'Kenzie's lively and graphic sketches of Spanish society have not been surpassed; that Dr. De Kay's volume upon Turkey is replete with information valuable to the general reader as well as to the naturalist; that Hoffman is successfully creating a national taste for works descriptive of our own scenery, and illustrative of our own history; that the letters of Mrs. Haight are written with vivacity and elegance; and that Stephens, Robinson, and Dewey, forsook customary routes of travellers, and struck

across the deserts of Egypt to the land of Edom, and have laid open to our observation the city of the dead. Of the American travels of Stephens, and the noble spirit which prompts his researches into the antiquities of Central America, we could not speak with too high praise.*

In the department of classical learning, the state has one student pre-eminently distinguished, Charles Anthon, of Columbia College. His fame is not only widely diffused throughout the United States, but his acquirements and labors are justly appreciated by the scholars of Europe. His critical and learned commentaries upon the works of the more popular classic authors are too familiar to need a reference. As the author of a classical dictionary, more accurate and extensive than any heretofore published, and as a diligent inquirer in the great department of the affiliation of languages, he has won for himself the highest rank among American classical scholars.

In the field of translations from modern languages, Dr. A. Sidney Doane, distinguished for his writings upon medical subjects, has won for himself high reputation.

We are not altogether without historical romance. In this department may be mentioned Paulding's "Dutchman's Fire-Side," Cooper's "Spy" and "Pioneers," and Hoffman's "Greyslaer." In other departments of fiction, "The Sketch-Book," "Bracebridge Hall," "The Conquest of Grenada," and other works, by Irving; the numerous productions of Cooper, the writings of Paulding, the graceful romances of Theodore S. Fay, and "Indian Sketches and the Hawk Chief," by John T. Irving, junior, have been received with much popular favor; while in satire, "Knickerbocker's History of New York," by Irving; "Salmagundi," by Paulding, Irving, and others; "The Bucktail Bards," by Duer, Bonner, and Verplanck; and the "Essays of Croaker & Co.," by Drake, Halleck, and Clinch, are very agreeable productions.

It must be confessed that a popular taste for poetry has not yet been created. We have no epic that has attained eminent celebrity; yet the less elaborate and the fugitive pieces, when collected, constitute a treasure not unworthy of public acknowledgment. Sacred song has seldom excelled the beautiful fragment commencing "Father of Light," written by William Liv-

* Notes on History and Travels were received from George Folsom, Esq.

ingston, in 1747. "Vice," a satire by Gulian Verplanck, which appeared in 1774, is distinguished for taste, elegance, and irony. In 1778, Anne E. Bleecker published several fugitive pieces, of which "A Thanksgiving after Escape from Indian Perils," and some others, are preserved. Anthony Bleecker, who contributed freely to periodical literature from 1800 to 1825, claims remembrance for an ode which assisted to make the wild and beautiful scenery of Trenton falls known to his countrymen. Our national lyric, "The American Flag," "The Culprit Fay," and other poems, by J. Rodman Drake, will prove to succeeding generations, that this utilitarian age is sometimes illumined by brilliant imaginative genius. The refined sentiment and mellifluous measure of "Yamoyden," "The Dead of 1832," and "Weehawken," are relied upon to preserve the memory of the lamented Robert C. Sands. A. H. Bogart, author of an "Anacreontic," in imitation of Moore; Jonathan Lawrence, junior, who has left, among other poems, "The Clouds," "Look aloft," "Morning among the Hills," and an "Ode to May;" William Leggett, author of an exquisite sacred melody, and elegiac verses entitled "Love's Remembrancer;" James G. Brooks, among whose remains are "Greece," "Joy and Sorrow," "An Ode to the Dying Year," and other unambitious and touching poems; Willis Gaylord Clark, author of many beautiful pieces, among which all American readers will remember, as peculiarly characteristic of the author, "Mary, Queen of Scots," "The Burial-Place at Laurel-Hill," "The Early Dead," and "The Death of the Firstborn; James Nack, in whom even the privations of speech and hearing could not repress the utterance of inspiration; John Rudolph Sutermeister, whose "Faded Hours" was prophetic of his early death; John B. Van Schaick, the writer of "Joshua commanding the Sun and Moon to stand still;" the sisters, Lucretia Maria Davidson and Margaret Miller Davidson; and Lucy Hooper, author of many beautiful poems—will long be remembered as sweet minstrels, whose voices were hushed in an early grave. Since death disarms envy, we have spoken with freedom of these departed votaries of the divine art; but prudence, and a respect for contemporaneous opinion, exact more caution in our notice of living poets. Bryant, to whom is assigned the palm in philosophic, descriptive, and didactic verse; Halleck, the versatile author of "Alnwick Castle," "Fanny," and "Marco Bozzaris;" Paulding, whose

"Backwoodsman" may be regarded as a national poem; Charles F. Hoffman, whose "Vigil of Faith" is the fruit of early-cultivated genius, and who has thrown the charms of poetry, as well as of romance, over our almost unknown mountains and lakes; Alfred B. Street, known as the author of "Nature," "A Forest Walk," and "The Grey Forest-Eagle;" Edward Sanford, author of the spirited "Address to Black-Hawk;" Peter H. Myers, author of "Ensenore;" George W. Doane, and William Croswell, writers of sacred lyrics; Theodore S. Fay, John Inman, and Park Benjamin, not unsuccessful in poetry, though engaged in other fields of literature; James O. Rockwell, author of "The Lost at Sea;" Samuel Woodworth, writer of a touching effusion, "The Old Oaken Bucket," which our domestic affections will not permit to lose a place in our literature; Elizabeth F. Ellet, author of "The Daughter of Herodias;" Mary E. Brooks and her sister, Mrs. Hall, known to our readers as Norna and Hinda; and Emma C. Embury, who has given us the chaste and affecting verses entitled "Christ in the Tempest"—all are writers whose fame is cherished by the generous and refined portions of the American community.*

The history of the fine arts in New York, unfortunately, is scarcely more than an account of a controversy concerning the manner of promoting them. The American Academy of Fine Arts was established in the city of New York in 1800, and was incorporated in 1808, with liberal legislative patronage. Among the founders of the institution, were Robert R. Livingston, John R. Murray, De Witt Clinton, Charles Wilkes, Robert Fulton, William Cutting, Edward Livingston, Rufus King, David Hosack, and James Fairlie. The object of the association was to combine influence and patronage in favor of the fine arts. Addresses were delivered at the annual exhibitions of the academy. Of these, the discourse of De Witt Clinton in 1816, and that pronounced by Gulian C. Verplanck in 1824, are very valuable contributions to our literature. Many of our artists conceived the opinion that the objects of the society would be better promoted by an association, conducted by professional individuals, than by the academy, the operations of which were mainly conducted by

* Notes on Literature were received from Charles F. Hoffman, Esq., and Alfred B. Street, Esq.

patrons. Hence arose in 1825, the National Academy of Design, the members and officers of which are artists. This association, under the presidency of Samuel F. B. Morse, has procured valuable collections in both the antique and life schools; and its usefulness has been signally manifested in the gratuitous instruction it has imparted to more than four hundred students. In the meantime, the Academy of Fine Arts has ceased to exist. Its place, however, is well supplied by the Apollo Association, consisting of both artists and patrons; an institution which cheers and encourages genius, without incurring jealousy or censure.

Painting, engraving, and sculpture, were scarcely known here before the Revolution. William Dunlap, a painter of considerable merit, has shown in his curious and interesting history, that West and Copley, in their early years, executed some portraits in the city of New York; but the state can not lay claim to any honor from the birth, education or fame of these distinguished men. Peter R. Maverick, an engraver, in 1783, found insufficient occupation, although he seems to have enjoyed a monopoly in the business of his profession. In about 1794, Cornelius Tiebout engraved some portraits on copper. Alexander Anderson, M. D., of New York, introduced wood engraving in 1794.

We need scarcely remark, that although we are very far from having established an American school, and although we confess our inferiority not only to the ancient masters but to modern European artists, yet the genius of our citizens has applied itself to the study of the arts with all the assiduity and zeal which mark the national character, and their success in that department may be expected to increase as rapidly as national taste and patronage will permit. All artists and amateurs in our country concede the palm to Peter Vanderlyn, among whose performances will be remembered his "Ariadne" and his "Washington."

Music was long since admitted in every plan of female education; but owing to a strange perverseness, has been almost universally neglected in the education of the other sex. Just sentiments, however, are beginning to prevail. Elementary instruction in that art is now given in many of our primary schools, and it may reasonably be hoped that soon there will be none in which this tasteful and refined study will be omitted.

It remains to notice the progress of the physical sciences. The notes on these subjects will be the more brief, because they are fully investigated in the work to which this is an introduction.*

The earliest publication relating to the botany of New York, was Cadwallader Colden's account of the indigenous plants of Orange county, and its vicinity, published in 1744. It is contained in the "Acta Societatis Regiæ Scientiarum Upsaliensis," and fills two quarto volumes. The catalogue embraced several hundred species, which were carefully described. The "Plantæ Coldenhamiæ" were frequently quoted by Linnæus. The traveller Kalm, who visited this country in 1747, under the patronage of the Swedish government, collected a large number of plants and transferred them to his preceptor Linnæus, by which distinguished naturalist they were described in the "Species Plantarum," and "Systema Vegetabilium." Wangenheim, a Hessian surgeon in the British army, during the American Revolution, collected many plants in New York, and in other portions of the United States, of which he published accounts in 1781 and 1787. The Michaux, elder and junior, travelled in New York in 1792, and in 1803. The former published in Paris, in 1803, the "Flora Borealis Americana." The latter, in 1810, and subsequent years, gave a description of our indigenous forest-trees, in his splendid work entitled, "Arbres Foresties de l'Amerique Septentrionale." C. W. Eddy, of New York, published in the "Medical Repository," in 1806, a catalogue of the plants growing about Plandome on the northern side of Long Island, in which several new species were mentioned. In 1811, John Le Conte published in the "American Medical and Philosophical Register," a list of four hundred and sixty-eight plants growing on the island of New York. A catalogue of plants indigenous in the state of New York, was published in 1814, by Jacob Green. Frederick Pursh explored portions of the state, and incorporated the results of his examinations in his valuable work entitled, "Flora Americæ Septentrionalis," published in 1814. Nuttall, author of the "Genera of North American Plants," and other learned works relating to the botany of this country, has materially aided in perfecting the flora of the state. In 1817, the "Lyceum of Natural History," in New York, appointed a committee to prepare a catalogue of the plants growing within thirty miles of the me-

* The Natural History of the State of New York.

tropolis. The duty was performed by John Torrey, M.D., and the results published at Albany in 1819. The localities, times of flowering, synonyms, and characteristics of new species, were included in the account. Amos Eaton, in 1818, published his "Manual of Botany for the Northern and Middle States." This work has passed through eight editions, the last of which was greatly enlarged, and appeared under the title of "North American Botany." The great circulation which this book has obtained is a gratifying evidence of increasing interest in this useful department of natural history. Doctor Torrey published in New York, in 1823, a volume designed to be a part of a series entitled, "Flora of the Northern and Middle States." The work comprised only the first twelve classes of the Linnean system, and the author then relinquished his purpose under a conviction that he would better advance the cause of science by adopting the natural method, and by describing the flora of the whole of North America.

The "Botany of the Northern and Middle States" was published by Doctor Lewis C. Beck in 1833, and has greatly contributed to the advancement of accurate botanical knowledge. James Hall and John Wright published, in 1836, a catalogue of plants growing in the vicinity of Troy. This work forms a useful manual for persons pursuing the study of botany in the valley of the Hudson, and contains the names of most of the plants indigenous in the river counties north of the Highlands. Doctors John Torrey and Asa Gray have been many years engaged in collecting and preparing materials for a complete "Flora of North America." The first volume of their work, comprising the polypetalous division of the dicotyledonous or exogenous plants, was published at intervals between 1838 and 1840. The authors adopt the natural system, and the work has been executed in a manner entirely in harmony with its high design. Besides these more elaborate works, other contributions to botanical science have appeared from time to time in scientific journals. Among these we refer to papers in "Silliman's Journal," by Doctor Gray, David Thomas, and others; descriptions of new and rare plants in the state of New York, by Doctor Gray, published in the "Annals of the New York Lyceum of Natural History;" catalogues of the indigenous plants of particular counties or towns, printed in the reports of the regents of the

university; and especially papers by Professor Dewey and Doctor Knieskern, contained in the last annual report. Many valuable papers on practical botany, and its relations to agriculture, are to be found in agricultural journals.

The science of zoology in this state owes its origin to Samuel L. Mitchill, who, in 1813, commenced, and in the succeeding year completed, an elaborate account of the fishes of New York. This paper was given to the public in the "Transactions of the Literary and Philosophical Society of New York." The work, although strictly local, and limited chiefly to a description of the fishes found in the waters in the vicinity of the city of New York, became a standard of reference and comparison for succeeding laborers in the field of ichthyology. That science not only received from the labors of Doctor Mitchill a great impulse, but its votaries here won for themselves regard from the savans of the old world, and were encouraged to persevere in their labors, even under disadvantageous and almost discouraging circumstances. To that impulse may be attributed the formation of the "Lyceum of Natural History" in the city of New York in 1818. In connection with this department of natural history, it would be unjust to pass without notice the efforts and researches of De Witt Clinton, who, although engrossed in public duties, devoted himself with assiduity to the pursuit of natural science, and especially to the study of natural history. The results of some of his investigations are contained in a letter to Doctor Mitchill, published in the "Transactions of the Literary and Philosophical Society."

Although the study of ornithology has not been pursued with the especial object of determining the species of birds indigenous in the state, still in the comprehensive treatises which have issued from the press, there is no deficiency of information on that interesting subject. The labors of Wilson, Bonaparte, Audubon, Cooper, and De Kay, in this department, are too well known to require more than a reference on this occasion.

Similar remarks apply to the history of the mammalia of the state. Although investigations in that department have been made by many distinguished individuals, none have confined their observations to species peculiar to the state, except William Cooper, who has published a treatise of the "Cheiroptera of New York." Bachman, of South Carolina, in researches extending

over most of the states, has made interesting discoveries in the families of many smaller quadrupeds in this state.

The reptile species, particularly the Tortoise, was described by Le Conte, in the "Annals of the New York Lyceum," in 1829. His paper contains descriptions of seventeen species of tortoises, although only a small number of them belong exclusively to New York.

Barnes, whose early death was deeply lamented, devoted himself to the study of the Unionidæ of our lakes and rivers. His descriptions were accurate, and they may be considered as the first successful attempt to classify the numerous species of this family of Mollusca. They were published in the "American Journal of Science." For a knowledge of the Mollusca of our seacoast, we are indebted to Doctor Jay of New York. Professor Bailey, of West Point, has also published very interesting results of his researches among the living Infusoria.

The investigations made in meteorology by our scholars deserve marked acknowledgments. They seem to have begun under an impulse which that science received in 1780, from the Meteorological Society of the Palatinate (in Germany), under the patronage of the Elector Charles Theodore. Simeon De Witt, who appears often in this memoir as a friend of science, published in 1792 a "Plan of a Meteorological Chart for Exhibiting a Comparative View of the Climate in North America, and the Progress of Vegetation." This plan contained suggestions which have since been found useful, but we are not informed what portion of them was original. Mr. De Witt, Gardner Baker, Jonathan Eights, and John Griscom, contributed, from 1795 until 1814, very useful papers in this department, which were published in the "Transactions of the Society for the Promotion of Agriculture and the Useful Arts. In March, 1825, the regents of the university, on the motion of Mr. De Witt, adopted the system, in pursuance of which the academies have since that time made daily observations upon the weather and the winds, together with notices of the progress of vegetation, and the occurrence of remarkable atmospheric phenomena, T. Romeyn Beck, Joseph Henry, Professor Ten Eyck, Benjamin F. Joslin, W. C. Redfield, Matthew Henry Webster, Charles Dewey, James H. Coffin, and others, have assiduously collated the facts obtained by academical and other observations, and the success of their labors has

received the praise of transatlantic as well as American philosophers.*

Dr. Franklin's experiments proving the identity of electricity and lightning, signalized the commencement of American chemical science. A chair of chemistry was established in the medical school founded in New York before the Revolution; and the science received a new impulse from the labors of Dr. Priestley, who, driven by popular bigotry and violence from his own country, renewed his learned studies in his retreat at Northumberland in Pennsylvania. It was not, however, until after the commencement of the present century, that the importance of chemistry was fully appreciated on either side of the Atlantic, and in this state it was not admitted to a place in collegiate education until 1813, when it was introduced at Union College. Since that time no faculty of arts or of medicine has been considered complete without a professorship of chemistry, and it is now very generally taught to pupils of both sexes in academies, and in many of the common schools.

The trustees of the Albany Academy are entitled to the praise of first introducing chemistry into our seminaries of that grade. The more popular experiments in electro-magnetism began in that institution with the construction of an electro-magnet capable of sustaining a weight of several hundred pounds. Our chemists have not been inactive, although their studies have been crowned with no brilliant discoveries, and their very useful papers will be found in most of the scientific journals in the country.

Few subjects in this department are more intricate in their nature than the minute analysis of mineral waters. The mineral springs at Ballston, Saratoga, Avon, Sharon, Massena and other places, have elicited memoirs embracing details of their chemical constituents, as well as essays on their respective sanative qualities. The springs at Ballston and Saratoga have acquired extensive reputation, from the publications of Seymour, De Witt, and Steele. Francis, Hadley, and Salisbury have made known the virtues of those at Avon. The waters at Sharon have been subjected to chemical analysis by Chilton; and Dr. M'Neven's

* Notes on Chemistry and Mineralogy were received from Lewis C. Beck, M. D.; notes on Meteorology, from T. Romeyn Beck, L.L. D.; notes on Scientific Societies, from Horace B. Webster, Esq.; notes on Natural History, from John W. Francis, M. D.; notes on Zoology, from Ebenezer Emmons, M. D.; notes on Botany, from John Torrey, M. D.; notes on Geology, from James Hall, A. M., and L. C. Beck, M. D.; and notes on the Progress of Knowledge, from Samuel Blatchford, Esq.

publications on the waters at Schooley's mountain, have conferred upon them much celebrity.

Mineralogy, although intimately connected with geology, was cultivated long before the latter grew into a distinct branch of knowledge. To the late Samuel L. Mitchill belongs the honor of introducing mineralogy in this state. The first and second volumes of the Medical Repository, published in 1798 and 1799, contain his sketch of the mineralogical history of the state of New York, which, although meager when compared with our present knowledge, shows that diligent investigation of facts had commenced. In the latter year a mineralogical society was formed in New York under his auspices, with the efficient aid of Samuel Miles Hopkins and George I. Warner. And the ardor of Dr. Mitchill's zeal is illustrated in this description of the object of the association, which he said "was to arm every hand with a hammer, and every eye with a microscope." The Medical Repository, from 1803 to 1809, and the Transactions of the Society for the Promotion of Useful Arts, from 1793 until 1804, contained many papers which contributed to excite the general interest now manifested in the study of the science. Among these we may specify a "Memoir of the Onondaga Salt Springs, and Manufactures in the State of New York, by Benjamin De Witt;" "Observations on the Natural History of Kinderhook and its immediate vicinity, by David Warden," in 1803; "Mineralogical Description of the Walkill and Shawangunk Mountains in New York," by Samuel Akerly; "Descriptions of Fluate of Lime and Oxyde of Manganese in the State of New York," in 1808; and "Mineralogical Notices of Onondaga, New York," 1809. But the effort which proved most successful in this department, was the establishment of the American Mineralogical Journal in 1810, conducted by Archibald Bruce. This work was continued until 1814, and was enriched by the learned investigations of Mitchill, Bruce, Akerly, Chilton, John Griscom, Benjamin Silliman, David R. Arnell and others.

An address by T. Romeyn Beck, before "The Society for the Promotion of Useful Arts," on the mineralogical resources of the United States, published in 1813, exhibited a very full view of the mineral productions within the state known at that time. Professor Cleveland's elementary treatise on mineralogy and geology, published in 1816, is still a standard work. Dr. Mitchill,

in 1818, published a reprint of Phillips' elementary introduction to mineralogy, with notes. Professor Silliman, in the same year, established the "American Journal of Science," which most useful periodical is still continued. Mineralogy has always held a prominent place in that journal, and it contains many valuable papers, showing the progress of the science in this state. The Lyceum of Natural History, established in New York in 1818, and a similar institution founded at Albany, contain rich collections of minerals. The latter, through the liberality of Stephen Van Rensselaer and William Caldwell, has acquired a library which contains almost every important work in the department of natural science. From the period when the geological survey commenced, the progress of mineralogy has been identified with that of geology, and the present condition of that science appears in that portion of the "Natural History" devoted to the subject.

The history of geology in this country commences with the year 1807. William M'Clure, a native of Scotland, who had emigrated to the United States, revisited Europe in 1803. Imbued with a love for the study of natural history, and possessing ample fortune, he traversed large portions of Europe, acquiring geological knowledge. Prepared by these researches, he undertook, on his return to this country in 1807, at a time when scientific pursuits were little appreciated, to accomplish, by his own enterprise, a geological survey of the United States. His observations were made in almost every state and territory in the Union; and not only in populous districts, where the comforts which the traveller requires were afforded, but also in forests and dreary solitudes, unaffected by all the privations to which he was exposed. The unlettered inhabitants of remote districts, seeing him engaged in breaking fragments from rocks, supposed him to be a lunatic escaped from confinement. The facts which he accumulated, were communicated to the American Philosophical Society, and published in their "Transactions," in 1809. The author continued his investigations during a series of many years. But in pursuing his valuable discoveries, he, like his successors, was influenced not so much by a desire to obtain a correct classification of our strata, as to identify them with those of the eastern continent. The publication of Mr. M'Clure called into the field a few laborers, and engaged the attention of friends of science.

De Witt Clinton, in his Introductory Discourse delivered in 1814 before the "Literary and Philosophical Society of New York," censured the legislature for having refused, at a recent session, to lend its aid to the prosecution of searches for coal within this state; and in considering the objects worthy the attention of that association, he remarked that "Men of observation and science ought to be employed to explore our country, with a view to its geology, mineralogy, botany, zoology, and agriculture." The "American Journal of Science," the "American Monthly Journal of Geology," by Mr. Featherstonhaugh, and the transactions of scientific associations in Pennsylvania, New York, and Massachusetts, were very efficient in enlightening the public mind concerning the importance of mineralogy and geology. A board of agriculture having been established by the legislature, under the recommendation of De Witt Clinton, he proposed in his annual message, in 1819, that that board should be authorized to make a statistical survey of the state, and describe its animal, vegetable, and mineral productions. Not at all doubting that coal would be found to compensate for the waste of fuel in the western portion of the state, then destitute of facilities for communication with the Atlantic coast, he urged that premiums should be offered to promote a search. Private liberality, however, anticipated this recommendation. Stephen Van Rensselaer, in 1820, authorized Amos Eaton and T. Romeyn Beck to make an agricultural and geological survey of the county of Albany. The result of their examination was a description of the rocks and minerals of the county, with an analysis of a variety of soils, together with remarks upon the condition of agriculture. In the succeeding year, Professor Eaton, with the same liberal patronage, completed a similar survey of Rensselaer county. In 1823, the liberality of Mr. Van Rensselaer took a wider range, and Professor Eaton was authorized to extend his survey throughout the region traversed by the Erie canal. His report proposed a general geological nomenclature, and contained a description of the strata extending from Boston to Buffalo. This publication marked an era in the progress of geology in the country. It is, in some respects, inaccurate; but it must be remembered that its talented and indefatigable author was without a guide in exploring the older formations, and that he described rocks which no geologist had at that time attempted

to classify. Rocks were then classified chiefly by their mineralogical characters, and the aid which the science has since learned to derive from fossils in determining the chronology and classification of rocks, was scarcely known here, and had only just begun to be appreciated in Europe. We are indebted, nevertheless, to Professor Eaton for the commencement of that independence of European classification which has been found indispensable in describing the New York system. For he remarks: "After examining our rocks with as much care and accuracy as I am capable of doing, I venture to say that we have at least five distinct and continuous strata, neither of which can with propriety take any name hitherto given and defined in any European treatise which has reached this country." Connected with the report, there was a view of the section of the rocks extending in the line of the canal through the state, and another from the Atlantic ocean to Pittsfield in Massachusetts, for the latter of which we are indebted to Edward Hitchcock, who has since completed a geological survey of Massachusetts, under the direction of the government of that state. Professor Eaton enumerated nearly all the rocks in Western New York, in their order of succession; and his enumeration has, with one or two exceptions, proved correct. It is a matter of surprise that he has recognised, at so early a period, the old red sandstone on the Catskill mountains; a discovery, the reality of which has since been proved by fossil tests. Had he followed up this discovery, he could not have failed to learn what an immense series of rocks lay below the old red sandstone, at that time entirely unclassified.

The munificence of Mr. Van Rensselaer, in producing such results, is illustrated by this remark addressed to him in Professor Eaton's report: "You have furnished every facility for perfecting the work. You have set no limits to my expenses, nor those of the engravers and printers." The public mind was now becoming prepared for the state surveys which have since been effected. North Carolina has the honor of having been the first to send geologists into the field. Professor Olmstead's report upon the economical geology of that state was published in 1825. Since that time, South Carolina, Massachusetts, Tennessee, Virginia, Maine, Rhode Island, New Hampshire, Connecticut, Pennsylvania, Ohio, Delaware, Kentucky, Georgia, Arkansas, and Iowa, and perhaps other states and territories, have been explored.

In 1835, the assembly of this state, upon the motion of Charles P. Clinch, a representative from New York, passed a resolution directing the secretary of state to report to the legislature, at its next session, the most expedient method for obtaining a complete geological survey of the state, which should furnish a perfect and scientific account of rocks and soils and their localities, and a list of all its mineralogical, botanical, and zoological productions, and for procuring and preserving specimens of the same, with an estimate of the expense of the undertaking. John A. Dix, secretary of state, in January, 1836, submitted a report in pursuance of this resolution. That luminous and satisfactory document led to the passage of the act of the 15th of April, 1836, in the execution of which, and of the acts of May 8, 1840, and of April 9, 1842, the survey has been made.* William L. Marcy, governor, arranged the plan of the survey in the summer of 1836, and assigned its departments as follows: The zoological department to James E. De Kay; the botanical department to John Torrey; the mineralogical and chemical department to Lewis C. Beck; the geological department to William W. Mather, Ebenezer Emmons, Timothy A. Conrad, and Lardner Vanuxem. This arrangement was subsequently altered by the institution of a palæontological department, under the care of Mr. Conrad, and by the appointment of James Hall to supply his place as a geologist. The results of the survey appear in thirteen large quarto volumes, and in eight several collections of specimens of the animals, plants, soils, minerals, rocks, and fossils, found within the state, one of which collections constitutes a museum of natural history at the capital of the state, and the others are distributed among its collegiate institutions.

It can not be necessary to dwell upon the benefits secured by the survey. It is not more necessary to know what resources are withheld from us than to understand those which Providence has been pleased to bestow. In regard to the narrow purpose in which the survey originated, it is no unprofitable result to know that coal can not be found within the state, and that we must depend for supplies of that mineral on trade with the countries with which we are connected. The want of coal, however, is

* It may be stated with just pride, that the law of 1836, appropriating the sum of $104,000 to the survey, was passed by the assembly unanimously. A further appropriation of $26,000 was made by the law of 1842.

compensated by the discovery of rich deposites of salt, lime, marl, peat, and gypsum, and of plumbago, copper, zinc, lead, and iron. The field within which economical science has recently pursued its investigations, with results so well calculated to exalt our sentiments of wonder, gratitude, and devout veneration, and so propitious to the future welfare and happiness of our race, is greatly enlarged, and many obstructions to those investigations are removed. Although, thus far, the survey has resulted only in adding accumulations to the mass of facts already acquired, yet even that is no unworthy contribution to human knowledge; and it may be hoped that a spirit of inquiry has been stimulated, which will not rest content until that philosophical classification of facts shall be made, which is necessary to enable us to read with accuracy the imperishable pages on which the physical history of the earth is written. What new light the discoveries thus to be made in cosmogony will throw upon the designs of the Creator and the destiny of our race, can not now be conjectured; but it is enough to stimulate and reward our highest efforts, to know that the human mind is perpetually active, while the range of research is infinite.

NOTE.

A history of our state would be far from complete without some reference to its Penitentiary System. Therefore, the following account of its origin and progress, prepared by Hon. JOHN L. O'SULLIVAN, is here introduced. It was originally furnished for the Introduction to "The Natural History of the State of New Yo k," and appears in that work as a note to Governor Seward's Introduction.—ED.

THE Penitentiary System of New York, as it has now existed for a period of nearly a quarter of a century, is a subject of the highest interest to the stranger, and of pride to our own citizens. The two great establishments in which it is to be seen in operation, on a larger scale than in any of the other states of the Union, are situated at the villages of Auburn and Sing-Sing; the former for the reception of convicts from the western, the latter from the eastern district of the state. The Mount-Pleasant prison, at Sing-Sing, on the Hudson, about thirty-three miles north of the city of New York, has also a separate building for the reception of female convicts from the whole state. The former of these establishments, at the village of Auburn, in the county of Cayuga, one hundred and sixty-nine miles west of Albany, was the first in the Union in which the peculiar system now prevailing in both was adopted, or at least carried out to that degree of completeness and efficiency, which has become the just subject of the admiration of the civilized world. It has, therefore, given its name to the system, notwithstanding that its leading features were by no means novel to the science of prison discipline, or original with the founder of this institution. It has constituted the model from which most of the other states of the Union have derived the plans of the penitentiaries which most of them have, of late years, been led to establish, under the stimulus of an example so successful in itself and so honorable in the eyes of the world; and in the vehement controversy which has been waged, through many modes of publication, between the respective partisans of this system and of the rival system in operation in the state of Pennsylvania, it is always and everywhere designated as *the Auburn system.* A brief sketch of its origin, as well as of its present condition, will not be deemed misplaced.

Previously to the year 1786, the different states of this Union were governed, in the main, by the sanguinary criminal code which all as colonies had inherited from their mother-country. In that year, Pennsylvania, in which had been more widely sown than in any other the seeds of that philanthropic wisdom which so peculiarly marked the character of its immortal founder, as well as of the religious communion of which he was an ornament, was the first to lead the way to her sister-republics in the direction of reform in criminal law and penal discipline. A new criminal code was created, the most interesting feature of which was the abolition of the former barbarism of capital punishment for all offences short of the highest felonies — treason, murder, rape, and arson. In a few years, under the auspices of such intellects and such hearts as those of a Benjamin Franklin, a Benjamin Rush, a William Bradford, and a Caleb

Lowndes, a still further amelioration took place. The year 1790 was marked by important mitigations of the former corporeal severities inflicted; and in 1794, the penalty of death was restricted to the single crime of murder in the first degree. The first penitentiary erected in the state was the Walnut-street prison in Philadelphia, in the year 1790; in which imprisonment at hard labor was substituted for the ancient modes of punishment for crime by the gallows, the lash, and the brand. A certain degree of classification was adopted for prisoners, according to their offences and characters; while solitary cells were provided for those who, for the more heinous grades of crime, were condemned to that penalty, as also for those whose violent resistance to the ordinary discipline of the prison required unusual means of restraint or punishment. The solitary cells were without the provision of labor, which in the other portions of the establishment was designed to afford one of the chief reformatory influences.

New York was not slow to follow in the track of a more enlightened penal policy, in which Pennsylvania thus bore off the honor of leading the way. The year 1796 marks the first prominent era in the history of penitentiary reform in this state. In his first message to the legislature, on the 6th January, Governor Jay recommended the mitigation of the criminal code, and the erection of establishments for the employment and reformation of criminals. Two years previously, two citizens of New York, distinguished for their humanity and liberality — Thomas Eddy, of the Society of Friends, and General Schuyler, alike in peace and in war one of the most illustrious of the founders of this commonwealth — had visited the Philadelphia prison, for the purpose of acquiring a more accurate knowledge of its tendency, structure, and its internal arrangements; and so favorable was the impression produced on their minds, that the latter gentleman, who was then in the senate of the state, immediately draughted a law for the erection of a penitentiary in the city of New York. This bill, "for making alterations in the criminal law of this state, and the erecting of stateprisons," in harmony with the recommendation of the governor, was brought forward in the senate, and ably and successfully sustained by Ambrose Spencer, the subsequent eminent chief-justice of the state, and finally became a law on the 26th of March, 1796. This law directed the establishment of two stateprisons, the one at Albany and the other at New York; though the idea of the former was afterward abandoned, and the whole appropriation expended in New York, under a commission consisting of Matthew Clarkson, John Murray, jr., John Watt, Thomas Eddy, and Isaac Stoutenburgh. This establishment (known as "Newgate") was opened for the reception of its inmates on the 25th of November, 1797. The building was 204 feet in length, a wing projecting from each end, and from those wings two other smaller wings. The whole structure was of the Doric order, containing 54 rooms, 12 feet by 18; besides the cells for solitary confinement, on the ground-floor. Criminals sentenced to imprisonment had heretofore been simply confined in the jails of the counties in which they were convicted. The law of 1796 effected at the same time an important amelioration in our criminal code. Previously to that period there were no less than sixteen species of crime punishable with death. Corporeal punishment was used, and in many cases felonies which were not capital on their first, became so on their second commission. In fourteen of these offences, imprisonment for life, or for shorter periods, was substituted for the capital penalty, which was only retained for treason and murder. The model afforded by the Philadelphia and New York prisons was soon successively imitated by other states. The stateprison at Richmond, Virginia, was erected in 1800; that at Windsor, Vermont, in 1808; at Baltimore, Maryland, in 1811; at Concord, New Hampshire, in 1812; and at Cincinnati, Ohio, in 1816.

But this system, the object of so much sanguine hope to its philanthropic projectors, was nowhere crowned with success. It is in the state of New York in particular that we are here to regard its operation. The great body of the convicts were thrown together in the prison, in numbers which soon became improperly crowded, and were kept at work through the day. The only punishment which their keepers had a right to inflict, for violation of the discipline, was solitary confinement, with bread and water. A small proportion of them, who before the reform of the penal laws would have been sentenced to death, were confined in perpetual solitude, unrelieved by the solace of labor. The system was found not only totally ineffective to reform, but on the contrary most perniciously active to corrupt and to harden. It was an enormous drain on the public treasury. It soon ceased to have any terrors for the depraved; while to young offenders, thrown for the first time into the midst of the polluted atmosphere and the fatal society assembled in the rooms of the prison, it was certain and irrecoverable ruin. And partly from the increase of population, but in probably a still greater degree from the tendency of the system itself to manufacture new rogues and to continue old ones, it became so overstocked as soon to make it necessary annually to pardon out large numbers of offenders for no other reason than to accommodate the reception of the fresh influx! Though adapted to the suitable accommodation of not more than between three and four hundred, it was at times occupied by upward of seven hundred—crowded and herded together beyond any possibility of proper classification. A report made to the legislature in 1817, by commissioners appointed to examine into the subject, stated that, within a period of five years, 740 had been pardoned, while only 77 had been discharged by the expiration of their sentences. In the two years, 1816 and 1817, the number of pardons was 573. A report made to the senate in 1822, by the Hon. Samuel Miles Hopkins, states the whole number of convicts committed since 1796 to have been 5,069, of which number there had been pardoned not less than 2,819. The necessary effect of such a system to promote the multiplication of crime, need scarcely be adverted to. It will be sufficient to state that, of twenty-three convicted of second and third offences in the year 1815, twenty had been previously pardoned, and only three discharged by the ordinary course of law. The average number of deaths was about seven per cent. Fires and insurrections were of not unfrequent occurrence.

The first suggestion of the necessity of another penitentiary in the interior of the state, was made in the annual report of the officers of the prison in 1809. The friends of the existing system, notwithstanding the annually-developed evidence of its total failure for every other than the worst purposes, still clung to their old ideas; and the admitted evils, manifest in the existing establishment, being ascribed to its crowded condition, when the erection of a second prison, at the village of Auburn, was determined upon in 1816, it was hoped that ampler space of accommodation, and smaller subdivisions of numbers, would yet produce the salutary results originally expected. The south wing of this building was completed in 1818, containing sixty-one double cells, and twenty-eight rooms, each of which was to contain from eight to twelve prisoners. But, for reasons obvious to those at all familiar with the vicious tendencies of imprisoned convicts, this plan was soon found to be the most fatal that could be adopted; and it was evident that it would be better to throw fifty criminals together in the same room, than to divide them in small numbers, and especially in pairs. The subject was much discussed at about this period, in both the legislature and the community at large; and in 1819 the erection of the north wing was ordered, to consist entirely of cells for solitary confinement. By a law of this year, too, for the first

time the use of the whip was permitted when deemed necessary for the maintenance of the discipline of the prisons.

At about the same period the public attention in the state of Pennsylvania also was much engaged with the same subject. In the year 1817, the manifest failure of the old system, as prevailing in the Walnut-street prison, led to the passage of a law for the construction of the Western penitentiary at Pittsburgh, and in 1821 for the Eastern penitentiary at Cherry hill, near Philadelphia; in which it was determined to adopt entirely the system of uninterrupted separate confinement. Desirous of making a similar experiment, the legislature of New York, on the 2d of April, 1821, directed the agent of the Auburn prison to select a number of the most hardened criminals, and to lock them up in solitary cells, night and day, without interruption and without labor; and in December of the same year a sufficient number of cells were completed for the purpose, and eighty criminals placed in them.

The result of this experiment, which was founded on the recommendation of a committee of the legislature, was disastrous in the extreme. Human nature could not endure the solitary horrors of such a doom. Within the year, five of the eighty died; one became insane; another, watching an opportunity when his keeper opened his door for some necessary purpose, in a fit of despair precipitated himself from the gallery, running the almost certain chance of destruction by the fall; and the rest sank into a state of such deep depression, and of failing health, that their lives must have been sacrificed had they been kept longer in this situation. Under these circumstances the governor pardoned twenty-six, and the remainder were withdrawn from their cells during the day to work in the shops of the prison. From this period, 1823, this system of uninterrupted solitude was abandoned at Auburn.

The failure of this experiment for a time seemed to endanger the success of the whole penitentiary system. The ardent hopes of its friends were nearly exhausted; and even some, whose feelings revolted at the idea of capital punishment, began to fear that it would again become necessary to resort to the more frequent use of the scaffold. But, as it is stated in a report by the late agent of the Mount-Pleasant prison, Mr. Robert Wiltse, made in March, 1834 (from which document we have already drawn considerably in the preparation of this narrative), Captain Elam Lynds, who was at this time the agent of the Auburn prison, was too wise to give up the idea that the beneficial moral influences of solitude might yet be combined with some successful system of congregated labor. He felt convinced that this result could be attained by a union of the two opposite principles — by confining the convicts to solitary cells at night and on Sundays, and compelling them to work during the day in large workshops in absolute silence, and under such a vigilant inspection as should preclude, so far as possible, all intercourse in any manner between them.

It has been a subject of some controversy who was entitled to the credit of having originated this system; a point necessarily difficult to decide, when it is considered how naturally, during the progress of its experimental growth, the suggestions which might proceed informally from the various minds engaged in and about it, would flow into one general current of opinion, common perhaps to several. Captain Lynds, having unquestionably been the first to complete, mature, and execute the plan, has generally received from public opinion the credit of its invention — an honor which justice would probably require to be divided with Mr. John D. Cray, one of the master-workmen or architects employed in the construction of the building.

The experiment was tried. Captain Lynds, a man of remarkable energy and firmness of character, who had formerly served in the army of the United States, and who

retained all the habits of rigid and severe military discipline there to be acquired, assembled the convicts together, and giving them the rules by which their conduct must be governed, told them that they must henceforth labor diligently, and labor in perfect silence and non-intercourse; and that, for every infringement of the rules, a swift and summary punishment should follow, of corporeal chastisement. This was soon proved to be no unmeaning threat; and in a short time, seconded by the able and unwavering exertions of his assistant-keepers, he succeeded in establishing this new discipline with a degree of efficiency scarcely conceivable to those who had not the opportunity of witnessing it.* Inspected in 1824 by a committee of the legislature, a high eulogium was passed upon it, and it was sanctioned by the formal approbation of that body.

The *Auburn system*, therefore, in its mature and complete state, may be said to date from the year 1824.

But it was soon found that its adoption must render necessary the construction of another prison for the eastern portion of the state, that of Auburn containing, as it was enlarged in 1824, only 550 cells. An act was therefore passed to that effect on the 7th of March, 1824; under which three commissioners were appointed—Stephen Allen, Samuel Miles Hopkins, and George Tibbitts—to select a suitable site. The village of Sing-Sing, on the Hudson river, thirty-three miles from New York, was selected, and a piece of ground purchased containing an inexhaustible quarry of white marble, which it was designed to make not only the material for the construction of the building, by the hands of the convicts themselves, but also a profitable article on which their future labor should be employed for the benefit of the state. To Captain Lynds, who had chiefly presided over the construction of the Auburn prison, as well as having performed the whole service of organizing its system of discipline and labor, was intrusted the charge of bringing forth the new establishment, as it were, out of the bowels of the earth. Were it possible to question its truth, as a literal historical fact, the manner in which he carried this into effect would be deemed incredible. According to his own plan, he was directed to take a hundred of the convicts from the Auburn prison, to remove them to the selected site, to purchase materials, employ keepers and guards, and make them commence the construction of their own future abode. The novel spectacle was exhibited on the 14th of May, 1825, of the arrival of this band on the open ground which was to be the theatre of operations, without a place to receive, or even a wall to enclose them. The remarkable moral energy of the man effected it with a success which must always remain astonishing. The first day sufficed to erect a temporary barrack for shelter at night; and ever after they continued in unpausing labor, watched by a small number of guards, but held under perpetual government of their accustomed discipline, and submission to the power whose vigilant eye and unrelaxing hand they felt to be perpetually upon them and around them. It was finished according to the original plan, in 1829, containing 800 cells; to which 200 more were ordered to be added by an act of the following year. Another story being therefore raised for this purpose, the final completion of this vast and massive edifice was in the year 1831. A sufficient number of cells having been completed in May, 1828, the convicts in the old prison at New York were removed to Sing-Sing, and that building abandoned and sold.

In the year 1835, the legislature directed the erection of another building at Sing-Sing, adjacent to the main prison, though unconnected with it, for the reception of the

* This system of discipline has since given place to one of less severity, in which corporeal punishments are prohibited.—Ed.

female convicts, who heretofore had been kept together by the city of New York, at its local prison establishment at Bellevue, at a cost to the state of $100 per annum for each prisoner. They were there in a miserable and disorderly state; that mode of maintenance being found replete with all the evils which it had been the object of the improved penitentiary system, as applied to the males, to reform. This was completed, in an elegant style of architecture, in 1840, and the convicts removed to it, and placed under the charge of a matron, whose admirable management soon brought them to a condition of good order, neatness, and industry, before supposed impossible by those who had witnessed their former character and conduct.*

It is unnecessary to fill the present pages with descriptions of these vast establishments of penitentiary labor, beyond a few simple general features common to both. The cells rise in tiers above each other to the height of five stories. These central structures are surrounded with an outer shell or envelope of a second wall, about eleven or twelve feet distant from the interior. Along the front of each range of cells runs a gallery. The size of the cells is seven feet in depth, by three and a half in width, and seven in height; all of stone, with iron doors, of an open-diamond grating from top to bottom, for the combined objects of security, ventilation, and light. To these buildings are attached spacious workshops, surrounding the large courtyards of the prisons, in which different branches of mechanical industry are pursued with the aid of machinery, in some instances on a very large scale; the whole being enclosed in high outer walls, vigilantly guarded by armed sentries, excepting at Sing-Sing, where there is no enclosure around the prison or the shops, the security of the convicts depending entirely upon the sentries. The convicts wear a peculiar striped prison-uniform, of coarse woollen fabric, manufactured within the prisons. Their movements to and fro at the regular hours, in the daily routine of the life of the prisons, are all made in single file, with the lock-step, and with the heads turned all in one direction, facing the constant eye of the keeper of each respective division, for the prevention of intercommunication. At Sing-Sing, they eat their meals singly in their cells; at Auburn, in large eating-halls, at tables at which they are seated back-to-back, and fronting only their keepers. The food is plentiful and healthy, though coarse. A scrupulous cleanliness reigns through every nook and corner of the establishments. The health of the prisoners is good; the average of deaths being about two per cent. per annum. Each prison is provided with a chaplain, whose whole time is devoted to his interesting though arduous pastoral charge, and under whose direction they receive instruction on the sabbath in Sunday-schools. The cells have always been supplied with bibles.† For many years the establishments have not only defrayed the cost of their own maintenance, but have continued to earn annually a large excess to the benefit of the general revenues of the state. The mode employed of using the labor of the convicts is to let it out at certain rates per diem, for fixed periods, to contractors in the different branches of industry pursued.

The proper limits of the present occasion forbid the expansion of this brief account with any further details of the operation of the system, whose gradual growth has been thus related. As has been already remarked, the conflict of opinion between the supporters of the Auburn system, of social labor in silence by day, with solitary confinement by night, and the Pennsylvania system, of uninterrupted separate confinement

* Mr. Seward was a prominent advocate of this measure while a member of the senate of the state in 1832. His speech in favor of the project is mentioned in the first volume of these Works. He also made it a topic of his annual messages to the legislature while governor.—Ed.

† During Governor Seward's administration, he directed that other books, suitably selected for instruction and moral improvement, should be added; and since that time annual appropriations have been made by the legislature to replenish the prison libraries.—Ed.

with labor, has been carried on with no small degree of both earnestness and ability. The advocacy of the Auburn system has been chiefly sustained by the Boston Prison-Discipline Society, the annual reports of which have continued, from the institution of that society in 1825, to hold it up to the admiration and imitation of the world, in terms of unqualified eulogium. The prisons have been visited by many thousands of strangers, from foreign countries as well as from the other states of this Union, attracted by the celebrity which they have acquired; and even those whose preference has inclined in favor of the theory of the Pennsylvania system, have not failed to accord a high degree of praise to the many admirable features characterizing ours, as well as to the excellent management with which they have been practically administered. The following states have since erected penitentiaries for the most part in imitation of the model thus afforded: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Maryland, Tennessee, Kentucky, Missouri, Illinois, and Ohio; together with the two provinces of Upper and Lower Canada—not to speak of numerous city prisons and county jails.

We are far from desirous of pronouncing even an opinion in relation to this controversy. There are undoubtedly some features in the Auburn system which its best friends would gladly see amended, if it could be done consistently with the efficient maintenance of the general whole of which these are particular parts; nor can it be pretended that the object of the prevention of intercourse between the convicts, by a thousand modes of communication beyond the reach of any degree of vigilance, either has been or ever can be attained, to the degree supposed by many who simply witness the apparent silence that reigns throughout the workshops.

At the last session of the legislature, provision was made for the appointment of a commissioner to examine certain locations in the northern part of the state, with a view to ascertain the practicability of employing the convicts, in a new prison proposed to be erected, in the labor of mining.* The system may therefore be represented as still in a somewhat unsettled state; and a short period may witness the application to it of changes, of which it might not be easy to predict either the extent or the nature—even if it were proper here to engage in any speculation of this character.

A few words, before passing from this subject, are due to another excellent institution which occupies a not unimportant position in the penitentiary system of the state—the institution for the reformation of juvenile delinquents, in the city of New York, commonly known as the House of Refuge. This was the first establishment of this kind in the Union, having been founded in the year 1824; though it presented an example which was speedily followed by other states. It grew out of the philanthropic efforts of a private association of gentlemen in New York, who were incorporated March 29, 1824, under the title of the "Society for the Reformation of Juvenile Delinquents;" among whom it will not be deemed invidious to particularize as among the most prominent and active, the late Thomas Eddy and Cadwallader D. Colden, and also Mr. Charles G. Haines, who, as chairman of a voluntary committee, was the author, in 1824, of a very able and valuable report on the history and discipline of penitentiaries in the United States, from which much aid has been derived in the hasty preparation of these notes. It was founded on a basis of private subscription, aided by annual assistance from the state; and is administered by officers chosen by the society, and superintended by its constant vigilance, under a system of general laws

* This resulted in the establishment, in 1845, of the Clinton prison, in Clinton county, sixteen miles northwest of Plattsburg, where the convicts are employed mainly in mining.—Ed.

for its government, enacted by the legislature. It thus partakes of the character partly of a private, though mainly of a public institution; while it has been one of very eminent utility for the rescue of thousands from a career of crime and ruin. It is conducted for the most part on the general plan of the Auburn establishment, though moderated in severity, and adapted to the different class of subjects embraced within its action: children of both sexes are received in it under the age of sixteen. It is a just subject of pride to both the state and the city, as well as of gratitude to its founders and supporters.*

* The following is an extract from a report made to the British government, in 1835, by William Crawford, on the penitentiaries of the United States:—

"The House of Refuge of New York was established by an act of incorporation in March, 1824. The idea originated with Professor Griscom, a gentleman of great respectability, who at that period resided in the city of New York. Mr. Griscom had lately returned from England, the charitable institutions of which had occupied a large share of his attention. He was particularly struck with the beneficial effects arising from the "Refuge for the Destitute" in London, and on his arrival in New York, lost no time in making public its meritorious objects, with a view to the establishment of a similar institution in that city. For this purpose he communicated with a society, which had recently been formed, and of which he was a member, for the prevention of pauperism. An address earnestly recommending the measure was immediately issued by that society. Public benevolence spontaneously answered the appeal, and in a few weeks funds were collected to the amount of $15,000." Another and similar institution was established, for the western part of the state, at Rochester, in 1846.—Ed.

STATE PAPERS.

ANNUAL MESSAGES.

ANNUAL MESSAGE TO THE LEGISLATURE,

JANUARY 1, 1839.

Fellow-Citizens, of the Senate and Assembly:

In the annals of our country, no year has been more signally distinguished by unmerited blessings than that which has just reached its close. The seasons have been genially tempered for the health of man, and the earth has abundantly rewarded his labors. Relations of peace, of reciprocal advantage and of benevolent intercourse, have been maintained with foreign states. The sway of the laws has been uninterrupted; and all the circumstances affecting our social condition have been auspicious. Our state has abundantly participated in the general prosperity and happiness. Our schools and other seminaries have discharged their beneficent functions with increased efficiency. The worship and instructions of the Christian religion have been enjoyed by our citizens with freedom of conscience as to faith and forms, and without compulsory support. The gloom which had spread over our country, in a period of commercial embarrassment, has passed away; and the enterprise of our people is resuming suspended employments in every department of social industry. The angry passions which availed themselves of that disastrous time to subvert public confidence in some of our institutions; to disseminate pernicious opinions, and to bring forward measures of

rash and intemperate legislation, have subsided, under a prevalent conviction that it is wiser to preserve than to destroy—and better to cherish a spirit of conciliation, harmony, and generous emulation, than to indulge jealousies and contentions. The zeal and patriotism manifested in our elections, prove that vigilance, the guardian of liberty, is yet unsleeping; while the peaceful and discriminating vindication of right principles, has given renewed confirmation of the excellence of republican institutions. These manifestations of favor imperatively demand our gratitude to Almighty God. Happy will it be for our country, and thrice happy for us, upon whom the responsibilities of legislation have fallen, if they shall inspire us with submissive obedience to his will, and a sense of constant dependence upon his protection and support.

The scrupulous good faith which the federal government owes to the several states, and the mutual confidence necessary to secure the successful operation of our complex system, alike demand the reimbursement to this state of the funds advanced to our citizens, upon a pledge which that government, with unlimited resources and credit, for reasons most inconclusive, refused to redeem. And the occasion seems proper to assert and maintain, temperately but firmly, that the return to the people of the surplus funds drawn from them by indirect taxation, and accumulated from the sale of lands, of which the national government was their trustee, ought to be immediately deprived of the character of a loan, and be declared an absolute distribution. No policy can be more unsound than to relieve that government of direct responsibility in regard to its finances. It has disclaimed the power, as well as the policy, of internal improvements. It will have abundant ability to provide for any exigency of public defence which may occur. It is unnecessary and dangerous to the liberties of the people to allow the national government to retain a lien on the states for forty millions as a contingent resource, stimulating to extravagant expenditure and improvident legislation.

The aggregate of tolls, including rents of surplus water, collected on all the canals during the last fiscal year, was $1,481,602 41. The cost of repairs and of the collection of tolls on all the canals was $639,714 32, which, deducted from the receipts, leaves the

net proceeds from tolls, for the year, $841,888 09. The cost of repairs and collection during the last year exceeds that of the previous year $30,806 59. The net revenue of the last fiscal year exceeds that of the preceding $128,085 25. The income of the Erie and Champlain canal fund from all sources, including the interest on $2,259,834 65 (the sum set apart to pay the remainder of the debt contracted on account of the Erie and Champlain canals), is $1,553,136 84. Of this amount there have been expended as follows: For repairs of the canals $449,058 64; of which were expended by superintendents of repairs $365,661 95, and by the canal commissioners, $83,396 69; for interest on the debt $129,374 05, and sundry payments, $26,892 65, leaving the surplus revenue of the canal fund for the last year $947,811 50.

The canal commissioners have expended in the last fiscal year for the enlargement of the Erie canal, $1,161,001 80. They borrowed, under authority of the act of April 18, 1838, including the premium, $1,005,050; leaving an excess of expenditure over the amount loaned of $155,951 80, which was paid from the surplus, and leaves the net surplus of the Erie and Champlain canal fund, after paying all charges, $791,859 70.

The amount of tolls collected on all the lateral canals is $58,264 76. This amount exceeds the aggregate of the preceding fiscal year, $12,979 58, and falls short of that of the year which ended on the 30th September, 1836, before the navigation of the Chenango canal, $2,531 42. The deficiency of the income of all the auxiliary canals to meet the expenses of repairs and of collection of tolls, and the payment of interest on the debt contracted for their construction, is $229,160 59; which amount deducted from the net revenue of the Erie and Champlain canal fund, leaves the net revenue of that fund, after paying all charges upon it, and the deficiencies of all the auxiliary canals, $562,-699 11.

The deficiencies of the several lateral canals are as follow: Of the Cayuga and Seneca canal, $15,517 62; of the Crooked Lake. $10,037 55; of the Oswego, $54,460 70; of the Chemung. $29,833 11; and of the Chenango, $119,311 61. The aggregate of tolls collected on all the canals during the last fiscal year exceeds that of the previous year by the sum of $154,821 51, and falls short of that of the fiscal year which ended on the 30th of September, 1836, $120,178. But the tolls collected on all the

canals during the season of navigation in the year 1838, exceed those of the same season in 1837, by the sum of $297,555, or 23 per cent. Of this excess $130,788 97, or 44 per cent., is upon ascending, and $166,766 03, or 56 per cent., upon descending freight. This estimate is made upon data which may be assumed as substantially correct, although it is to be understood as not precisely accurate. This comparison while it demonstrates the severity of the pressure which has recently visited the state, not only furnishes cheering evidence of returning prosperity, but gives assurance of the constantly increasing productiveness of our system of internal improvements.

The aggregate loans made for the construction of canals now in progress, is $2,615,182 84, to wit, for the Black-River canal $613,076 29, and for the Genesee Valley canal $2,002,106 55. There have been paid on account for the construction of these canals $384,353 12, to wit, for that of the former $122,793 52; for that of the latter $261,559 60; and there remains on deposite in the banks, drawing an interest of 5 per cent. (equal to that on the loans), the balance $2.230,829 72.

It is respectfully submitted, that more perfect responsibility would be secured if the term of office of the canal commissioners should be limited so as to bring them periodically before the appointing power, retaining the provision for their removal at earlier periods if the public interests should require. Of the $1,481,602 canal tolls received, $104,645, about one fourteenth part, is expended in payment of inspectors, clerks, collectors, and tenders of locks. And the sum of $639,714, almost one half, is consumed in these payments and repairs. It scarcely admits of doubt, that the system is capable of such revision as would reduce these heavy expenses, and proportionally increase the net revenues of our canals. The compensation of the superintendents and collectors ought to be fixed by law, instead of being left to the pleasure or caprice of the canal commissioners, or the canal board.

With the extension of our internal improvements, there has been an immense and unlooked-for enlargement of the financial operations and of the official power and patronage of the canal commissioners and the canal board. These operations are conducted, and this power and patronage exercised and dispensed with few of those securities for accountability and publicity which are

maintained with scrupulous care in every other department of the government. So inconsistent and unequal are the best efforts to establish simplicity, uniformity, and accountability throughout the various departments, that a great, mysterious, and undefined power has thus grown up unobserved, while the public attention has exhausted itself in narrowly watching the action of more unimportant functionaries. It is a proposition worthy of consideration, whether greater economy and efficiency in the management of our present public works, would not be secured; a wiser direction would not be given to efforts for internal improvement throughout the state, and a more equal diffusion of its advantages would not be effected by constituting a Board of Internal Improvements, to consist of one member from each senate district. This board might be divided into two classes, the term of one of which should expire annually. It should discharge all the duties of the present canal board; should audit all accounts, should have the general superintendence of the canals, and of all other public works, with powers of investigation in regard to those in which the state has an interest by loan or otherwise; should report upon all special applications for surveys, or aid, and should annually submit a detailed statement of its proceedings to the legislature. It is the worst economy to devolve upon officers constituted for one department, duties appurtenant to others. Its universal results are diminished responsibility and diminished efficiency in both the principal and incidental departments.

The site of the Lunatic Asylum was well selected. It is an elevated plain of one hundred and twenty-four acres, susceptible of that ornamental cultivation which is a wonderful auxiliary in the treatment of the insane. The vicinity of the flourishing central city of Utica, affords many facilities for its construction, and promises those moral and social aids which such a public charity requires. A plan submitted by the commissioners, received the approbation of my predecessor. The plan contemplates four edifices, consisting of a basement and three stories, except the main building of the principal front, which will have an additional story. The four edifices are to be located at right angles to each other, fronting outward, and to be connected at the angles by verandas of open lattice-work, the whole to enclose an octagonal area of about thirteen acres. The buildings are to be constructed

of the blue limestone of Little Falls, and in the Doric order. It is designed to furnish the necessary accommodation for the care and treatment of one thousand lunatics. The east front will command a view of the city, and the north will have a prospect of the canal, the valley of the Mohawk, and the long range of hills in the distance which divide the waters flowing into Lake Ontario from the tributaries to the Hudson. The principal part of the basement has been constructed, with an expenditure of forty-six thousand dollars, exclusive of the cost of the site. Thus you will perceive has been laid the foundation of a charitable institution commensurate with the exigencies of the state, not unworthy of its growing wealth, and justly designed to endure as a monument of the taste and munificence of this age. It is right to award both the honor and the responsibilities to those who have hitherto been charged with the execution of the trust. The law declared that on the selection of the site the commissioners should be authorized to contract for the erection of the asylum upon such plan and on such terms as they should deem proper, provided that the plan and the terms should be approved by the governor; and that the commissioners should superintend the erection of the building. No contract for the construction of the asylum was made either before or after its commencement. The document furnished by the commissioners, and herewith submitted to you, states the probable cost at $431,636. There is no security that the expenditure will not exceed that sum. Whether these proceedings have conformed to the intention of the legislature is a question which I shall not be expected to discuss. I cheerfully express my approbation of the undertaking. Nations are seldom impoverished by their charities. The number of the insane in this state is not exaggerated; and I am not prepared to say that any erection less extensive would afford the space, light, tranquillity, and cheerfulness, indispensable to this interesting department of the healing art. Among all his blessings none calls so loudly for gratitude to God as the preservation of our reason. Of all the inequalities in the social condition, there is none so affecting as the privation of that attribute. He sees fit to cast upon our benevolent care those whom he visits with that fearful affliction; and it would be alike unfeeling and ungrateful to withhold from them our sympathy. Let then this noble charity be carried forward; it remains with you, however, to deter-

mine with what measure of munificence. The commissioners will apply for an appropriation of one hundred thousand dollars for the present year.

The number of pupils in the New York Institute for the Deaf and Dumb, on the 10th of November last, was 145. The number enjoying its advantages at the public expense, is 120. An additional building has recently been constructed, with an expense of $8,000. The institution is in a prosperous condition, in regard as well to its internal management, as to its course of instruction and its finances. Its success in conveying knowledge, sympathy, affection, and happiness, to the unfortunate beings whom a mysterious Providence has denied two of the faculties most important to their enjoyment, although it has ceased to be a wonder, is not less deserving our gratitude.

The Institution for the Blind, a new and noble charity, has been recently founded in New York, and it is in successful operation. It has sixty-one pupils, gathered from all parts of the state. Privation of sight is seldom a solitary calamity. These unfortunates are not only blind, but their persons often bear the marks of long disease or extreme poverty. Since this institution has become a beneficiary of the state, and depends rightfully upon the public munificence for success in its benevolent enterprise, it seems proper to afford to its patrons the advantages, and to the public, the security of visitation by the secretary of state.

The House of Refuge continues to discharge its duties in reclaiming the juvenile delinquents whom an enlightened policy commits to its care, instead of consigning them to the association and discipline of more hardened convicts. Could not the same policy be extended in some manner, to the preliminary examination and trial of this class of offenders? There is no doubt that the public and unfeeling manner in which these proceedings are conducted, confirm in habits of guilt many whose crimes are the result only of neglect of moral culture, and who, by prudence and kindness, might be reclaimed and rendered useful members of society.

I commend, without hesitation or qualification, all these humane institutions to your guardian care and provident assistance. The philanthropy of our age seems not only to be imbued with unexampled benevolence, but gifted also with powers almost divine. It brings to the deaf and dumb, the joys of conversation; to the

blind, the knowledge and uses of external relations; calls back erring reason to its throne, and reclaims the guilty from the ways of transgression.

The number of convicts in the stateprison at Mount Pleasant, is 842. The prison for female convicts there, an institution required by the humane spirit of the age, will be speedily completed.* The plan contemplates separate apartments for seventy-two of this class of convicts, a very small number in comparison with that of the other sex, but happily for our state, and honorably for the character of woman, a number greater than any for which the state has ever been called to provide. The number of convicts in the prison at Auburn is 636. Extensive repairs are required in this prison, and some alterations would be expedient. The number of convicts received at both prisons in the year 1832, was 471; in 1833, 412; in 1834, 446; in 1835, 441; in 1836, 365; in 1837, 520; in 1838, 444. Crime has not increased in the same ratio as population. The number of convicts received in the prisons in 1837, a year memorable for its pecuniary embarrassments, exceeds that of any other in the series. Increase of prosperity diminishes the amount of crime. The proportion of colored persons in the state to that of white persons is 1 to 48. The proportion of colored persons in the stateprisons is about 1 to 6. This class of our population is in a great measure deprived by its condition of the advantages of our schools. It is respectfully submitted whether a solicitous regard for the public welfare, justice to an injured race, and the dictates of an enlightened humanity, do not require us to provide more effectually for their education.

All institutions of government are imperfect, and subject tc the law of improvement. Despotism denies this. It holds that institutions are complete, and that laws are wise, because they are old. It maintains that error is sanctified by prescription, and compels the submission which renders it invulnerable. A different principle prevails in America. Antiquity has a shrine and worship in all lands but this. We have learned, that as the intelligence of people increases, the power of the government

* The establishment of a separate prison for female convicts, was effected in a great measure, by the efforts of Mr. Seward, while he was a member of the senate, in 1832. See "Debates in Senate of New York," vol. i.—*Ed.*

may safely be abridged; that error must be separated from our institutions before it becomes inseparable; and that the best laws, unless modified according to the ever-varying condition of society, operate injuriously or fall into disuse. I shall, therefore, in the discharge of the duty enjoined by the constitution, freely submit for your correction, any errors and abuses in our laws, which may seem to exist, carefully excluding the discussion of those parts of our system which experience has approved.

Every other vice of government is more endurable than delay in the administration of justice. Yet this is the vice that most easily besets republican institutions. Our courts of common pleas have the constitution, forms and ceremonies of courts of civil jurisdiction, but exercise few of their important functions, and enjoy little of the respect and confidence indispensable to their efficient action. With jurisdiction co-extensive with the county as to persons, and unlimited in regard to the value in controversy, possessing ample means to secure impartial trials, and plenary powers to execute their judgments, these courts are too often deserted by all suitors, except those who bring to their bar unimportant and trivial complaints. The supreme court is unequal to its responsibilities. Professional ingenuity, stimulated by the litigious passions of parties, and encouraged by the law's delay, seeks error as a ground for appeal, in every stage and form of proceeding, from mesne to final process. Causes in that court have frequently cumbered its calendar two years. Suitors in the court of chancery encounter even greater hinderance and delay. These evils are incidents of our judicial system. Rights of property are of little worth when their proprietor must be ruined by delay in establishing them, or when death or insolvency defeats his remedy. Delays of justice are not less demoralizing, than injurious to commercial confidence and destructive of enterprise. The ability of our judges to decide deliberately such causes as they examine, is impaired by the pressure of a mass of business which they entertain no hope of accomplishing. In presenting this subject, I am sustained by the frequent, earnest, and enlightened suggestions of my predecessor. It is conceded that there are no adequate remedies for these evils without an amendment of the constitution. You will, probably, deem it expedient to provide for abolishing the office of circuit judge, to increase the number of judges of the supreme court, and require all its mem-

bers to try issues of fact at nisi prius as well as issues of law at bar; to organize a superior court of common pleas, with concurrent civil jurisdiction, and powers co-extensive with those of the supreme court; and to reorganize the court of chancery with such addition of chancellors as shall be necessary to decide originally all causes to be brought in that court. There is an argument of greater force than that of convenience, for dividing the power and responsibilities of the chancellor. The very nature of the controversies which come before him, requires the collision of thought afforded by a judicial bench. The powers of the court of chancery are too vast, and its patronage too great, to be vested in a single individual without other responsibility than that provided by the constitution. The boundaries of its jurisdiction are more obscure than those of other courts, and its process more searching and potential.

If you desire to restore to the courts of common pleas the popular respect, the consciousness of dignity and capabilities of usefulness which are indispensable to the efficient administration of justice, it is respectfully recommended to relieve the judges from their responsibilities in the appointment of county treasurers, commissioners of deeds, and superintendents of county poorhouses. Experience has proved nothing if it remains doubtful whether judges ought to be compelled to be partisans. Democracy is a fallacy if the supervisors are incompetent to appoint the disbursing officer of taxes which it is their province to levy, or without the intervention of executive beneficiaries, to select men qualified to administer oaths, or persons honest enough to superintend the affairs of an almshouse.

The fees of the clerks of the supreme court, and the register, assistant-register, and clerks of the court of chancery, were graduated upon a scale supposed to be necessary to secure them an adequate compensation. But it is complained that the amount of these perquisites exceeds the value of the services rendered. Judges of the supreme court have descended from the bench to enjoy the golden streams supposed to flow into these offices. Integrity and assiduity are required in all public employments. Besides these, the incumbents of those offices ought to possess the skill merely clerical, and scarcely more than mechanical, to record and certify, in set forms and technical words ever recurring, the proceedings of their respective courts. To demand

from the litigants an exorbitant compensation for such services, is as unjust as extortion in any other form. To lavish it upon public favorites, is anti-republican, wasteful and demoralizing; and yet if the complaints alluded to are true, this is not merely permitted by law, but enforced in the name and with the sanctions of justice. It is universally admitted that popular governments ought to be economically administered; but it can not be too well understood that our state government, like that of the nation, constantly manifests a tendency to depart from this principle. I submit to your enlightened consideration, that this tendency can only be counteracted by the substitution of fixed salaries instead of perquisites, where it is practicable, and by limiting the compensation of public officers. Artful devices are framed, and changes of form adopted, to increase the frequency of occasions to demand fees. It is difficult to ascertain the aggregate amount received, and the increase of business in every department, deranges the most nicely-adjusted scale of compensation. Interested partisans, or generous advocates for extravagant compensation to public officers, are never wanting, and plausible arguments are always at their command. The indigence of the incumbent, the supposed dependence of his family, the necessity of maintaining a certain rank, are arguments which easily satisfy those who see in the question only two points, the want of the office-holders, and the abundance of the government. All such arguments, however, are inconclusive, because they admit unlimited compensation. The only true rule is, that the state, like an individual, must pay, for services rendered, the amount necessary to secure the requisite skill, industry, and ability; and the test of compensation must be the question, whether public offices are declined by qualified persons, on the ground of its inadequacy. Your investigation may be properly extended to the various offices of county clerks, registers, surrogates, notaries, and commissioners to perform certain duties of judges of the supreme court.

The public service is not to be regarded as a profession. The healthful action of our whole system depends upon the responsibility and the frequent change of agents. He is as much a pensioner who receives a compensation exceeding the value of his services, as one who receives allowance from the public treasury. Of pensioners, this country ought to know only those whose

reward is a stinted requital for perils, privations, and sufferings, in the achievement and defence of our liberties.

An exception in our statute, concerning the foreclosure of mortgages, renders it necessary to resort to the court of chancery to extinguish the equity of redemption of subsequent mortgagees and judgment creditors. Stimulated by cupidity, many persons carry into that court cases in which a foreclosure in pursuance of the statute would be equally effectual. Foreclosures in chancery are always expensive, and often oppressive I submit this grievance as one which has been the subject of just and general complaint.

In the various transactions of commerce there may sometimes be occasion for the intervention, between buyer and seller, of an experienced person to test the quality of an article of merchandise; but I think you will find this principle has been unnecessarily extended. I am quite certain you will find individuals in the humble offices of inspectors of productions and merchandise, quietly enjoying such a rapid accumulation of fortune by perquisites, as would shock the republican feelings of the country, if paid to judges or legislators of transcendent abilities and learning. You will relieve agriculture and commerce of unnecessary burdens, and rightfully diminish the patronage of the executive, by reducing the number and emoluments of these officers.*

I am persuaded I only follow the expressed opinion of the people, in declaring that the law prohibiting the banks from issuing bills of a lower denomination than five dollars, is unwise, and has been productive of manifold and serious inconveniences. The act passed by your predecessors, suspending its operation two years, is not satisfactory. I therefore recommend that this suspension be converted into an unconditional repeal.

The experimental policy of the federal government in regard to its finances has not only produced calamitous measures at Washington, but has stimulated or seemed to demand extraordinary legislation on the part of the states. Among our laws passed in consequence of that policy, were the act prohibiting the issue of small bills by our banks; that removing the penalties for a suspension of specie payments, which fortunately expired by its own

* It will be seen in his succeeding messages, that Governor Seward did not allow these reforms to slumber until they were all successfully accomplished.—*Ed.*

limitation; another enlarging the time of redemption on the foreclosure of mortgages, which has already been repealed; and a memorable act, happily never carried into effect, but, nevertheless, still remaining a precedent in our statute-book, delegating to certain public officers the power to borrow on the credit of the state six millions of dollars, to be loaned to individuals, and to banking institutions enjoying chartered privileges and carrying on their operations for their own profit. It would seem that sufficient time had elapsed, since the adoption of the Constitution, for the general government to determine the currency in which its taxes should be received. Permit me to express the hope, that since that government has ascertained that its financial business can be conducted without a bank, it will speedily adopt some fixed and permanent system for the collection and disbursement of its revenues; a system that will neither bring our liberties into jeopardy, nor spread alarm for their security by the creation of a banking institution in any form, whether corporate or an engine of the executive department; which will not again exact that impracticability, the payment of the precious metals for duties, taxes, and other revenue; nor again embarrass and derange all the operations of business by rejecting for its demands the only currency which, in the present condition of the civilized world, can be maintained—a mixed currency of gold, silver, and redeemable paper. Our great city is the centre of American trade. The state, always solicitous for its prosperity, is abundantly willing and competent to provide for its moneyed interests and secure its currency against depreciation and loss, and repels, as she ought, the suggestion that she consents to be dependent upon the policy or magnanimity of any other member of the confederacy for her currency or facilities of commerce; nor can she be incited to hostile action against any such member or its institutions. In the exercise of her constitutional sovereignty to promote the prosperity and welfare of her citizens, she asks of the federal government to be let alone. She pays as cheerfully as largely, the contributions exacted, but rightfully demands that the government shall consult the public interest, by preventing that unfaithfulness of its financial agents which is impoverishing the treasury and staining the national character. For the rest she will, with the blessing of God and in the spirit of our institutions, depend upon herself. Acting on this principle,

the state has repealed the restraining laws and adopted a system which, establishing proper safeguards for the currency to be issued, authorizes the business of banking by associated individuals, without the special and exclusive feature of legislative charter. Under this law, certificates have been filed by thirty-two banking associations, with an aggregate actual capital of $8,883,175. A safer currency than theirs is unknown in the commercial world. These operations are yet too recent and limited to enable us to determine the practical effects of the system. It seems certain, that with the general revival of confidence in the community, associations under this law will be multiplied, converting a mass of dormant wealth into active capital, giving new impulses to industry and enterprise, and working a mighty change in the condition of the country. In view of these consequences, I respectfully recommend a revision of the law to correct defects and guard against abuses, and especially to prevent the associations from putting into circulation the doubtful paper of the moneyed institutions of other states.* The reciprocal benefits of our trade with other states, as well as the spirit of our national Union, require that no impediment should be interposed to such a circulation of their paper as its intrinsic worth may secure in the regular course of business. But our citizens must necessarily be ill-informed of the condition of the moneyed institutions of sister states. To induce an extensive circulation of their bills by permitting apparent or real engagements for their redemption within this state, will expose us to hazard of loss by frauds, and an enlargement of the paper currency, beyond all control of the government, and banish, at the same time, the better known and safer currency of our own institutions.

The test of the qualifications of electors, and the form of applying it, have been found deplorably deficient in our populous cities. Notwithstanding all existing preventives and penalties, there are crying abuses of this precious right. It is violated by every vote of an unqualified person, and every such vote tends to endanger not merely the peace and prosperity of society, but the security of republican institutions. Anarchy will surely follow the discovery that the ballot-boxes are an uncertain organ of the

* These suggestions were promptly adopted by the legislature. See Laws of 1839, p. 328.—*Ed*

will of the people. Conscientiously holding the principle of universal suffrage, and indulging no apprehension of evil from its practical operation, if fairly carried out, with proper safeguards against its abuse, I am yet free to confess my fears, that it will prove a fatal franchise, unless such safeguards be applied.

There have been periods of debasement when it was believed that the energies of man were unequal to greater achievement, and his character susceptible of no further improvement; that inexorable laws frustrated all efforts to increase his security or mitigate the evils of his condition; and that his destiny would be speedily completed by destruction sent from the presence of an offended Deity, upon him and the earth he had polluted. The tendencies of the present age vindicate a more cheering theory. The light of the human intellect increases in brilliancy and reveals new mysteries to man's persevering investigation. His passions become more equable and humane; his energies break through the restraints of power and prejudice, and the democratic principle is leading in the way to universal liberty. This generation would be froward indeed to ask for other signs than it enjoys, that our race is ordained to reach, on this continent, a higher standard of social perfection than it has ever yet attained; and that hence will proceed the spirit which shall renovate the world. The agency of institutions of self-government is indispensable to the accomplishment of these sublime purposes. Such institutions can only be maintained by an educated and enlightened people. It requires national wealth to dispense effectually the blessings of science, and social ease and independence, to produce a desire for their enjoyment. But education and national prosperity are reciprocal in their influence. If it were asked why knowledge is generally diffused among the American people, the answer would be, because wealth is more generally diffused. And if it were inquired why the solaces and enjoyments of life are found in our dwellings, the reply would be, that it is because education has been there. The augmentation of both prosperity and knowledge may be indefinite, and the security of republican institutions be constantly increased, if that augmentation be impartially distributed. The spirit, therefore, that pervades our country and animates our citizens to seek the advantages of competence, is to be cherished rather than repressed. It resists the inroads of aristocracy and demolishes all its defences.

It annihilates the distinctions, old as time, of rich and poor, masters and slaves. It banishes ignorance and lays the axe to the root of crime. To enlarge, therefore, national prosperity, while we equalize its enjoyments and direct it to the universal diffusion of knowledge, are the great responsibilities of our age. Out of these responsibilities arise the systems of internal improvement and education.

Our country is rich, beyond all she now enjoys, in latent, unappropriated wealth. The minerals within the earth are not more truly wealth hidden and unused, than the capabilities of its surface to yield unmeasurable fruits to sustain the steps and gladden the hearts of the children of men. Emigration from the older states tending westward with constantly increasing numbers manifests the resources of native labor we possess to render these capabilities productive. There is another resource which is ours, but not by inheritance, nor by purchase, nor by violence, nor by fraud. It is the surplus labor, the incalculable surplus labor of the European states. This is wealth, and the moral energies of those who bring it hither are an element of national greatness. They come to us under the same law which controlled the colonists in their emigration and settlement here. They force themselves upon us even though we inhospitably resist them. The surplus capital of Europe, too, is seeking our shores with the same certainty and in obedience to the same law. Though it be anathematized from our high places, and denounced by those who, removed by fortune beyond the general necessities, desire to maintain the power derived from what remains of inequality in our social condition, it still flows unseen over our land, and abounding prosperity vindicates its presence and its usefulness. This tide is now acquiring increased volume and velocity from the reduction of the distance between the two continents by Atlantic steam navigation. They who would roll it back, must change not merely the relations existing between this country and Europe, but the condition of society on both continents They must reinvigorate the energies of Europe, substitute democracies for her thrones, and religious toleration for her hierarchies. They must subvert the institutions, and break down the altars of liberty in America, arrest the prosperity of the nation, deprive enterprise of its motives, and deny to labor its rewards. If all this is not done, the settlement of our western regions will go on;

new states will demand admission into the Union; their trade and commerce will continue to augment our wealth; and their citizens, no matter whence they spring, to claim us as brethren. If the energies of the new states already planted adjacent to the shores of the lakes be seconded and sustained by a wise and magnanimous policy on our part, our state, within twenty years, will have no desert places—her commercial ascendency will fear no rivalry, and a hundred cities enable her to renew the boast of ancient Crete.—The policy of this state includes every measure which tends to develop our own resources, or those of the regions which can be made tributary to our commerce, and every measure which invites the labor and capital of Europe. It requires that we welcome immigrants among ourselves, or speed them on their way to a western destination, with all the sympathy which their misfortunes at home, their condition as strangers here, and their devotion to liberty, ought to excite. If their inclination leads them to remain among us, we must assimilate their principle, habits, manners, and opinions, to our own. To accomplish this, we must extend to them the right of citizenship, with all its inestimable franchises. We must secure to them as largely as we ourselves enjoy, the immunities of religious worship. And we should act not less wisely for ourselves, than generously toward them, by establishing schools in which their children shall enjoy advantages of education equal to our own, with free toleration of their peculiar creeds and instructions.

Thirteen years' experience has proved the inadequacy of all our thoroughfares for the transportation of persons and property between the frontier and tide-waters. It is submitted whether sound policy does not require that the enlargement of the Erie canal be completed as speedily as may be consistent with the public convenience. This generation may as well participate in its manifold advantages as resign them The loss of interest upon partial expenditures during a long term of years, is an item not unimportant; and the expenses of transhipment and other inconveniences resulting from the navigation of different parts of the canals with boats of different forms and magnitude, are auxiliary arguments to prove that the public interest requires the earliest feasible enjoyment of the cheapness and expedition of the improved navigation.

The year 1838 has been signalized by the momentous confirmation of the highest hopes excited by the successful application of steam power to the propelling of boats. But this wonderful agent has achieved, almost unobserved, a new triumph, which is destined to effect incalculable results in the social system. This is its application to locomotion upon the land. Time and money are convertible. Husbandry of the one is economy of the other, and either is equivalent to the economy of labor. Railroads effect a saving of time and money; and notwithstanding all the incredulity and opposition they encounter, they will henceforth be among the common auxiliaries of enterprise. Happily, it is not in our power to fetter the energies of other states, although we may repress our own. This useful invention, like all others, will be adopted by them, although it gain no favor with us; and they who are willing that New York shall have no railroads, must be ready to see all the streams of prosperity seek other channels, and our state sink into the condition of Venice, prostrate and powerless, among the monuments of her earlier greatness. A glance at the map will render obvious the utility of three great lines of communication by railroads, between the Hudson river and the borders of the state. One of these would traverse several of the northern counties, and reach with its branches to Lake Ontario and the St. Lawrence. A second, keeping the vicinity of the Erie canal, would connect Albany and Buffalo. A third would stretch through the southern counties, from New York to Lake Erie. It is certain that neither one nor two of these works would accomplish the useful ends of all, and when the growing wealth and importance of the several regions directly interested in such improvements are considered, it is not less clear, that however delayed, all must eventually be completed. It remains then to be decided whether it is wiser to regard them as rival enterprises, each by the operation of local jealousies hindering and delaying the others, or whether all shall be considered as parts of one system, and equally entitled to the consideration and patronage of the state. Capitalists have conceived not only the usefulness, but the productiveness of the central route, and notwithstanding the adverse influences of the recent pressure, have accomplished one half of the whole undertaking. The public defence may sometimes demand, and the public convenience already requires, as great a reduction of the

distances as possible between our commercial metropolis, the capital of the state, and the populous cities and long line of flourishing villages of the west. The attention of far-seeing and patriotic citizens was early directed to the route through the southern counties. That enterprise has been commenced and prosecuted by an association with commendable perseverance, under most embarrassing circumstances, resulting not only from the same commercial revulsion, but also from the magnitude of the undertaking, which exceeds that of any work of internal improvement ever completed, except the Erie canal. Legislative aid, in the form of loans, has been granted to both the central and southern roads. I earnestly hope that you will inquire into the condition and prospects of both of these undertakings, and bestow a careful examination upon the conduct, management, and resources of the associations engaged in their construction; and assuming the principle that there is neither economy nor wisdom in procrastination, adopt such measures as will secure their completion without delay. The advantages and claims of the various projects for the northern line, including those of two distinct and entire routes, are yet under discussion. The whole subject merits, as I doubt not it will receive, your dispassionate consideration. I have only to add, in regard to this improvement, that I know no reason for delay when the most feasible and advantageous plan shall have been ascertained. I shall cheerfully concur in any measures you may adopt to secure to that flourishing and hitherto neglected part of the state, an early and full participation in the benefits of our system of internal improvements. I have called your especial attention to three great projects of improvement, because their routes, extending from the borders of the state to tide water, are obviously designed to accommodate large and important divisions of our population, and to open to the reach of labor and capital extensive regions which, whatever may be their present prosperity, have scarcely begun to disclose their resources. These contemplated improvements are important parts of a system of public defence which it is wise to have always in view, and which are certain to become thoroughfares of the boundless internal trade to be carried on with the western states and British America. They are therefore works of great importance to the whole state, and are entitled to be regarded as arteries in that great system of internal improve-

ments which an enlightened and prophetic vision of the future wealth and resources and relations of the state would have suggested, while its solitudes were yet untrodden by civilized man. They deserve to be classed with those parts of the same great system already completed, or in process of construction—the Erie and Champlain, the Oswego, the Seneca and Cayuga, the Chenango and Chemung, the Genesee Valley and the Black River canals; and if their completion can not speedily or advantageously be effected otherwise, like them they ought to be constructed at the expense of the state.*

Nature, never jealous of our co-operation, supplies us with resources and facilities, but presents few of her works finished for our immediate use. Thus she leaves us incentives to invention, and scope for action, while she seldom fails to indicate the right direction for effort. The policy of our state is so legibly written upon its surface that to err in reading that policy, or to be slothful in pursuing it, is equally unpardonable. The ocean reaches through the tide waters of the Hudson far inland. The lakes and reservoirs within our bounds, as well as the seas upon our borders, were designed to fill the artificial channels we have constructed as tributaries to our noble river. It is a policy even more obvious to maintain the natural uses of the river itself, and to perfect every feasible branch of its navigation. This is only to secure a natural and full circulation in the heart, while we are diffusing it to the extremities of the system. I congratulate you upon the success which attends the efforts of the general government to remove the obstructions in the vicinity of Albany. The prosecution of this enterprise, although carried on by that government, will constantly deserve, and perhaps may, as heretofore, require your attention. I respectfully commend, as a part of the same policy which devolves peculiarly upon the state legislature, the improvement of such of the northern branches of the Hudson as are capable of being rendered navigable. The settlement of the public lands of the state would be facilitated, and large portions of our fellow-citizens accommodated by this improvement. There are other projects, both of railroads and canals, of less magnitude, many of which, however, embrace wide and important interests, and whose accomplishment would

* Governor Seward has had the satisfaction of seeing these three great works completed and in successful operation.—*Ed.*

largely promote the public convenience and advance the public good. It would be invidious to discriminate among these projects in a communication which does not admit the discussion of their merits. Internal improvement regards the highest possible cultivation of every part of the state, and the perfect development of its resources; the widest possible extension of the territory which can be made tributary to its markets, and the greatest possible diminution of the cost of transportation of persons and property; and consequent increase of population and labor, and diminished cost of production. All such improvements, therefore, rightfully engage the public attention, and will doubtless receive from the legislature the discriminating favor due to their respective merits.

In this state taxation for purposes of internal improvement is happily unnecessary, as it would be unequal and oppressive. The founder of the system had always in view its prosecution to the full extent consistent with the physical formation of the state, although the invention of railroads was unknown or partially understood by him, and consequently the manner in which the system was to be carried forward was unforeseen. He asserted most truly, that the argument for such a system was not a mere question of dollars and cents—that its revenues were unimportant compared with its more general, more enduring and more beneficent results, the continual advance by millions in the value of real estate, the increase in quantity and value of agricultural productions and manufactured fabrics, the establishment and enlargement of inland commerce, and of foreign trade, economy in the expense, saving of time, and increase in amount of travel, augmentation of population, unbounded prosperity and increase of rising villages, cities, and towns, and all the consequent advantages to morality, piety, and knowledge. But he maintained that independently of all these results, the interests of the state in regard to the mere question of revenue, required the adoption of the system. Freely conceding that there must be parts which would not immediately, and some which would never yield revenue equal to the cost of their construction, he maintained that they might yet be admitted as tributaries to the greater channels; and that the aggregate revenues of all would defray the entire cost of construction, and yield a surplus large as the munificence which a republican government ought to

bestow upon institutions of charity and education. It is history now that these enlarged and comprehensive views were by no means generally sustained; that his magnanimous efforts to enlarge the wealth, promote the happiness, and elevate the fame of his native state, were resisted by a policy which pronounced his glowing anticipations as visionary, and the entire system fraught with intolerable taxation and ruin; that this antagonist policy early became ascendant, and that the several enterprises since undertaken have been hard-won triumphs over prevalent convictions of the legislature. Fortunately this momentous question has been at last decided. The present resources and credit of the state show that the most ardent advocates of the system failed altogether to conceive the vast tribute which it has caused already to flow into the treasury. I respectfully refer you to a report of a committee of the last house of assembly, in which this subject is discussed with eminent ability, and which results in showing that the canals are a property substantially unincumbered; that their productiveness would warrant the state in expending in internal improvements $4,000,000 annually during a period of ten years; and that the revenues of the canals alone would reimburse this expenditure previous to the year 1865. This sum far exceeds any estimate of the expense required to complete the entire system, while it is not to be doubted that the parts yet to be constructed will eventually be productive of revenue. The conclusions of this report, although of vast interest to the state, and, I trust, decisive of its policy, have not been questioned.

The total state debt is	$11,256,152 84
The funds on hand	4,527,465 58
The balance of state debt over funds on hand	$6,728,687 26

The construction of the canals of this state has been carried on chiefly with funds derived from loans. The whole amount borrowed is about fifteen millions; the balance of the debt for their construction is less than five millions; and the Erie and Champlain Canal Fund alone, it has been seen, yields a net revenue, after paying all legitimate charges upon it, and all deficiencies of the auxiliary canals, of $718,650 91. History furnishes no parallel to the financial achievements of this state. It surrendered its share in the national domain, and relinquished for the general welfare all the revenues of its foreign commerce, equal

generally to two thirds of the entire expenditure of the federal government. The state government has, nevertheless, sustained the expenses of its own administration, and founded and endowed, not only a broad system of education, but also charitable institutions for every class of the unfortunate, and a penitentiary establishment which is adopted as a model by civilized nations. The state has increased four-fold the wealth of its citizens and relieved them from direct taxation; and in addition to all this has carried forward a stupendous enterprise of improvement, all the while diminishing its debt, magnifying its credit, and augmenting its resources.

This cheering view of our condition ought to encourage neither prodigality of expenditure nor legislation of doubtful expediency. All appropriations for purposes of internal improvement ought to be made with a view and constant purpose to call into co-operation individual capital and enterprise. Rigid economy ought to be enforced, and perfect accountability exacted, in this as in every other department of the public service. But action is the condition of our existence. Our form of government chastens military ambition. The action of the people must be directed to pursuits consistent with public order and conducive to the general welfare. Otherwise our country will be rent by civil commotions, or our citizens will seek other regions, where society is less tranquil, and where ambition enjoys greater freedom, enterprise higher motives, and labor richer rewards.

We are required to carry forward the policy of internal improvements, by the abounding experience of its benefits already enjoyed; by its incalculable benefits yet to be realized, and by all our obligations to promote the happiness of the people, to multiply and raise their social enjoyments, to maintain the fame of the state, inestimably dear to its citizens, and to preserve the integrity of the Union, and by the paramount duty we owe to mankind, to illustrate the peacefulness, the efficiency, the beneficence, and the wisdom of republican institutions.

Nevertheless that legislation is unwise, which is exclusively devoted to enterprises of great moment, and overlooks measures of obvious but common utility. The present condition of our highways has resulted from the necessity of constructing roads over an extended surface, with the scanty means and efforts of a sparse population. But this inconvenience has in a great meas-

ure ceased to exist. The labor expended upon our highways is a grievous tax, and yet our roads are scarcely improved. Their summer repairs effect little more than restoring them to the condition they maintained before the injuries of the winter season occurred. The evil lies in a misapplication of the labor assessed. Your experience in regard to this subject is sufficient to convince you of the necessity of reform, as well as to suggest the most effectual measures for its accomplishment.

It affords me pleasure to state, in reference to all our collegiate institutions, that their usefulness has been increased, and their prospects are more auspicious than heretofore.

There are one hundred and forty-six incorporated academies, seventy-nine of which are subject to the visitation of the regents of the University, and participate in the distribution of the literature fund. The act of 1837 renders admission to these advantages so easy, that it is probable all will soon be placed on the same basis. The number of students in the academies subject to visitation is about ten thousand, and the number in all the academies in the state is estimated to exceed fifteen thousand. The sum to be annually distributed hereafter is $40,000, being in addition to $28,000, the previous annual appropriation.

There are ten thousand five hundred and eighty-three organized common-school districts in the state, of which nine thousand eight hundred and thirty have maintained schools during an average period of eight months within the last year. The number of children between the ages of five and sixteen in the school-districts, is five hundred and thirty-nine thousand seven hundred and forty-seven, of whom five hundred and twenty-eight thousand nine hundred and thirteen received instruction in the common-schools within the year.

The colleges, academies, and common schools, constitute our system of public instruction. The pervading intelligence, the diminution of crime, the augmented comforts and enjoyments of society and its progressive refinement, public order, and the supremacy of the laws, testify that the system has been by no means unsuccessful.

It must, nevertheless, be admitted that its usefulness is much less than the state rightfully demands, both as a return for her munificence and a guaranty of her institutions. Some of our

colleges and academies languish in the midst of a community abounding in genius and talents, impatient of the ignorance which debases and the prejudices which enslave. The common-school system, but partially successful in agricultural districts, is represented as altogether without adaptation to cities and populous villages. The standard of education ought to be elevated, not merely to an equality with that attained in other states, but to that height which may be reached by cultivating the intellectual powers, with the aid of modern improvements, during the entire period when the faculties are quick and active, the curiosity insatiable, the temper practicable, and the love of truth supreme. The ability to read and write, with the rudiments of arithmetic, generally constitute the learning acquired in common schools. To these our academies and colleges add superficial instruction in the dead languages, without the philosophy of our own; scientific facts, without their causes; definitions, without practical application; the rules of rhetoric, without its spirit; and history, divested of its moral instructions. It is enough to show the defectiveness of our entire system, that its pursuits are irksome to all except the few endowed with peculiar genius and fervor to become the guides of the human mind, and that it fails to inspire either a love of science or passion for literature. Science is nothing else than a disclosure of the bounties the Creator has bestowed to promote the happiness of man, and a discovery of the laws by which mind and matter are controlled for that benignant end. Literature has no other object than to relieve our cares and increase our virtues. That the pursuits of either should require monastic seclusion, or be enforced by pains and penalties upon reluctant minds, is inconsistent with the generous purposes of both. Society can not be justly censured for indifference to education, when those who enjoy its precious advantages manifest so little of the enthusiasm it ought to inspire. All the associations of the youthful mind in the acquisition of knowledge, must be cheerful; its truths should be presented in their native beauty and in their natural order; the laws it reveals should be illustrated always by their benevolent adaptation to the happiness of mankind; and the utility and beauty of what is already known should incite to the endless investigation of what remains concealed. If education could be conducted upon principles like these, the attainments of our collegiate instruction

might become an ordinary measure of acquirement in our common schools; and our academies and colleges would be continually enjoying new revelations of philosophy, and attaining higher perfection in the arts which alleviate the cares of human life.

If these reflections seem extravagant, and the results they contemplate unattainable, it need only be answered that the improvability of our race is without limit, and all that is proposed is less wonderful than what has already been accomplished. I do not hesitate to invite efforts to establish the standard I have described. Postponed, omitted, and forgotten, as it too often is, amid the excitement of other subjects and the pressure of other duties, education is nevertheless the chief of our responsibilities. The consequences of the most partial improvement in our system of education will be wider and more enduring than the effects of any change of public policy; the benefits of any new principle of jurisprudence, or the results of any enterprise of physical improvement, we can accomplish. These consequences will extend through the entire development of the human mind, and be consummated only with its destiny. We seem at last to have ascertained that the only practicable manner of introducing normal schools into our country, is by engrafting that system upon our academies. I ardently hope you will adopt such further legislation as is required to make this effort successful. Provision has been made for the establishment of school district libraries. If I do not greatly err, this cheap and easy mode of bringing into contact with the juvenile powers the discoveries of science and the mysteries of the arts, will be the era of a new impulse to the cause of education. The common schools may resist every other influence, but they can not withstand that of the general improvement of the community. I can not too earnestly solicit your co-operation in the beginning of this wise and momentous policy. Visitation is the very principle of life in all seminaries of instruction, and acts upon both instructors and pupils by all the incentives which excite, and all the motives which encourage emulation. If properly applied, it would call to the aid of the state, in this mighty interest, allies at once the most natural and efficient, parents themselves. The regents of the university are, by virtue of their office, visiters of the colleges and academies, and inspectors are the legal visiters of common schools. How utterly this duty of visitation has fallen into disuse, your own observation

and the public voice abundantly testify. The office of inspector of common schools is unhappily always involved in the political organization of parties. Generally it falls, by custom strong as law, upon young men engrossed by private affairs. Its duties confer, in public estimation, nothing of the dignity, and maintain little of the importance, which would induce their faithful execution. For this evil of our whole system there is a remedy, simple, economical, and effectual—the establishment of a department of education, to be constituted by a superintendent appointed by the legislature, and a board to be composed of delegates from subordinate boards of education to be established in the several counties. The state board might exercise a general supervision, with powers of visitation of the colleges, and the county boards the same powers in their respective counties. The duties of all these officers, except the superintendent, ought to be discharged without compensation, and the tenure of office might be made so long as to insure efficiency. I am satisfied the state abounds with competent individuals who would assume those duties without other remuneration than the consciousness of rendering enlightened and patriotic service in the cause of education.

The science which involves the physical laws most open to our investigation, and to which the primeval law of our existence compels us, and the art which precedes all other inventions, and whose cultivation leads to plenty and is cheered by health and contentment, are the last which receive the patronage of philosophy, or attain the favor of government. Mankind learned the distances and laws of planets, and even the periods of comets, before they conceived the mysteries of vegetation; and the fine arts were perfected in ages when agriculture, loaded with the superstition of centuries, was consigned to slaves. It may easily be explained why this should have been the experience of other ages and other countries. The powers of government have always been vested in classes or individuals furthest removed from the tillers of the soil; and ambition and pride have sought gratification in conquests and in homage of the fine arts. But it must not, it can not be so here, where the agricultural interest is sovereign, and, as it furnishes all the means, rightfully also supplies the motives, and directs the action of the government.

Every acre of cultivated land could be made to yield, with the

expense now bestowed upon it, products exceeding by one third in quantity and value its present fruits. The dissemination among the cultivators of the earth of the science belonging to their art would enlighten their minds, enlarge their views, elevate their motives, and refine their sentiments. Let it be well remembered, that all this is necessary if we would not see the power residing with them steal away to other classes, whose pursuits secure intellectual cultivation and superior wealth. Agriculture appeals to us as republicans, therefore, with peculiar earnestness, not only by our desire to increase the public wealth, enlarge the public intelligence, and elevate the standard of public virtue; but also by our solicitude to preserve the ascendency of that policy of peace and improvement which is identified with the existence of democratic institutions.

Among the plans of improvement which have been suggested is the formation of a Board of Agriculture. I respectfully commend it to your favorable attention. Such a board might be usefully employed in introducing new species and varieties of productions, and improved implements of husbandry, and in carrying on a general correspondence with a view to promote the interests of agriculture. I submit, also, whether it would not be well to require that a popular treatise upon agriculture should be contained in the district school libraries; and whether legislative sanction and patronage could not be so extended as to encourage the organization of agricultural societies, free from the defects which have hitherto proved fatal to their permanency and success.

It is now eleven years since this state was suddenly called to mourn the death of a citizen, who illustrated her history by a life of eminent public usefulness. His death happened in the maturity of his manhood, and while the wisdom of his policy and the purity of his motives were yet loudly questioned. Experience has, more rapidly than the almost inspired enthusiasm of his genius anticipated, sanctioned the one, and posterity has made extraordinary haste to vindicate the other. His remains still rest in that vault of a private friend which hospitably received them, as a sacred trust, until an auspicious period for fitting obsequies should arrive. He is understood to have left to his children no inheritance but what they enjoy in common with all their fellow-citizens—his own fame and their abounding public prosperity.

The custom of honoring the dead commends itself to the natural sentiments of mankind; and although, in ignorant and depraved countries, it has been abused by the erection of pyramids, and temples, and tombs, to preserve the ashes of tyrants, it can not, among an enlightened people, be otherwise than right and expedient to perpetuate the memory of public benefactors, and thus to stimulate and encourage emulation of their deeds. Our state early followed the good example, by providing a tomb for the ashes of a gallant soldier who fell in her service in a foreign land.* It can not be too often remembered or practically illustrated, that worthy as military renown is of posthumous honors, civic virtues less frequently attain their just reward; that statesmen pass an ordeal more trying than the field of battle, and that the history of this state records the fame of many valiant generals, while it has witnessed only one such personification of genius and virtue as De Witt Clinton. I therefore respectfully recommend that the ashes of that illustrious citizen be deposited underneath a monument to be erected in this capital.

May the blessing of that Almighty Being, in contrast with whose power states and empires are but dust, and in the light of whose wisdom all human counsels are darkness, crown your deliberations for the public good.

* General Montgomery.

ANNUAL MESSAGE TO THE LEGISLATURE.

JANUARY 7, 1840.

FELLOW-CITIZENS OF THE SENATE AND ASSEMBLY:

The experience of the past year teaches us that the most perfect form of government, and the most favored condition of society, can not exempt us from the vicissitudes of life. We have, nevertheless, great cause for thankfulness to the Universal Father. The seasons have been propitious; we have been free from the ravages of pestilence and the calamities of war; the earth has yielded abundant fruits, and notwithstanding embarrassments have been felt by every class of society, the comforts of life were never more equally or more profusely distributed. Industry has not been diverted from its pursuits, and mutual confidence, although temporarily shaken, has still a firm support in the prevalence of morality and the supremacy of the laws. The credit of the state remains unimpaired, and its currency has, in a great degree, escaped the evils which have elsewhere proved disastrous. Peaceful relations have been maintained with foreign countries, and the harmony of the states has not been disturbed. The great safeguards of our liberty remain; all the elements of our national prosperity have been preserved; and we are permitted to rejoice, with increased confidence, in the durability of the Union, and the perpetuity of republican institutions.

[The governor here gives a detailed statement of the fiscal affairs of the state, which, being of temporary interest, is omitted.—*Ed.*]

NOTE.—The numerous important suggestions contained in this message, and the uniformity with which they have been adopted, are equally remarkable. The able and elaborate exposition of Governor Seward's views on internal improvements will also be found interesting and instructive. The whole message exhibits, in a strong light, the foresight and statesmanship of its author.—*Ed.*

The improvement which has taken place in all the revenues of the state, while it must be highly gratifying to our fellow-citizens, will, I hope, only conduce to greater economy in the management of public affairs.

The high reputation which this state had acquired from the improvement of its criminal code, and from its system of penitentiary discipline, has recently become impaired by very general complaints of inhumanity in the management of our prisons. While the punishment of offenders should always be enforced with firmness, the spirit of the age manifestly requires that discipline should be tempered with kindness, and that moral influences, rather than severe corporeal punishment, should be employed to secure the submission and promote the reformation of the convict. I trust that you will bestow early attention upon the defects of the present system, and I respectfully suggest that provision be made by law for the instruction of convicts, and for supplying them with such books as shall conduce to their reformation.*

I also invite your attention to the condition of our county jails. The baleful influence of vicious association is too often promoted by the defects in their construction, and the experience they furnish is calculated to destroy whatever remains of generous spirit or virtuous motives. Their defects demand correction, not less upon the ground of economy than from considerations of humanity; and if we would not fall into a common error, we should seek to reclaim less-hardened offenders, by cultivating their moral feelings while we are dispensing the punishment awarded to their crimes.

You will learn from the report of the managers of the house of refuge that the responsibilities of that institution have been discharged with efficiency, and with the most salutary results. The establishment of a similar institution in the western part of the state is desired by a very large number of our fellow-citizens. This proposition derives weight from the consideration of the expense of transporting offenders from distant counties, and the cost of maintaining them in a populous city, and will doubtless

* A law was passed, May 4th, 1840, "for the better regulation of the stateprisons." The governor, also, during the same year, directed those penitentiaries to be supplied with the district school libraries. The benign operation of these measures is well known.—*Ed.*

receive at your hands the discriminating favor to which it is justly entitled.*

The institution for the instruction of the blind continues to discharge its responsibilities with good success. It has sixty-six pupils, of whom fifty-nine are state pupils, and there are sixty-nine vacancies to be filled from the different counties, in pursuance of the law passed at the last session. The institution for the deaf and dumb administers its inestimable benefits to one hundred and seventy pupils, maintains its high reputation, and enjoys the unmeasured confidence and kindness of the community among whom it is located. One hundred and twenty of these pupils, being the full number of beneficiaries allowed by law, are supported at the expense of the state.

I transmit a report of the commissioners appointed to superintend the erection of the Lunatic Asylum, from which you will learn that they are prosecuting their important duties with efficiency.

Our scientific institutions continue to maintain their high repu tion. Twenty-five students were graduated at Columbia College within the year, and that institution has now one hundred and thirty-eight members. The number of graduates at the University of the city of New York was twenty-eight, and its present number of under-graduates is eighty. The grammar-school connected with that institution contains two hundred and sixty pupils. One hundred and six students received their first degree at Union College, and it has now two hundred and seventy-eight members. There are ninety-two students at Hamilton College, and seventeen were graduated within the year. Geneva College has sixty-three studen's.

I have great pleasure in transmitting to you a document containing a view of the rise, progress, and present condition of the New York University. The liberal principles upon which it was established, the munificent endowments granted by its founders and patrons, and the perseverance with which it has surmounted many and great embarrassments, as well as the promise of usefulness, guarantied by new and auspicious counsels, commend the

* This suggestion has been carried out in the establishment of the Western House of Refuge, at Rochester.—*Ed.*

appeal of the trustees to the favorable consideration of the legislature.

You will learn, with great satisfaction, that the law providing for the establishment of libraries in the school districts has been carried into successful operation in most parts of the state, and that measures have been adopted, in pursuance of an act passed at the last session, to secure an efficient visitation of the common schools.

Although our system of public education is well-endowed, and has been eminently successful, there is yet occasion for the benevolent and enlightened action of the legislature. The advantages of education ought to be secured to many, especially in our large cities, whom orphanage, the depravity of parents, or other forms of accident or misfortune seem to have doomed to hopeless poverty and ignorance. Their intellects are as susceptible of expansion, of improvement, of refinement, of elevation, and of direction, as those minds which, through the favor of Providence are permitted to develop themselves under the influence of better fortunes; they inherit the common lot to struggle against temptations, necessities, and vices; they are to assume the same domestic, social, and political relations; and they are born to the same ultimate destiny.

The children of foreigners, found in great numbers in our populous cities and towns, and in the vicinity of our public works, are too often deprived of the advantages of our system of public education, in consequence of prejudices arising from difference of language or religion. It ought never to be forgotten that the public welfare is as deeply concerned in their education as in that of our own children. I do not hesitate, therefore, to recommend the establishment of schools in which they may be instructed by teachers speaking the same language with themselves and professing the same faith. There would be no inequality in such a measure, since it happens from the force of circumstances, if not from choice, that the responsibilities of education are in most instances confided by us to native citizens, and occasions seldom offer for a trial of our magnanimity by committing that trust to persons differing from ourselves in language or religion. Since we have opened our country and all its fullness to the oppressed of every nation, we should evince wisdom equal to

such generosity by qualifying their children for the high responsibilities of citizenship.*

The time assigned for completing the geological survey of the state is about to expire. High expectations of its usefulness have been raised by the partial reports which have from time to time been submitted to the legislature, and provision should be made for preserving the invaluable scientific treasures which have been collected. Extensive as the collection is, it will probably be continually increased by new contributions. The place assigned for its accommodation should, therefore, be both spacious and accessible. The encouragement of agriculture, by a more general dissemination of the sciences which it employs, has been the subject of frequent recommendations from this department, and of much discussion in the legislature. The geological survey may be regarded as laying the foundation of institutions for popular instructions in these sciences, and I confidently anticipate that it will not only develop the mineral resources of the state, but will secure to agriculture its rightful consideration and influence.†

It is manifest that the militia system has lost some of the popular respect with which it was once regarded, and has received little of that legislative care which is necessary to preserve the usefulness and efficiency of all our institutions. This can not be prudent, unless it is wise to forget in peace the probability of war, and in undisturbed tranquillity the danger of civil commotion. I trust, therefore, that you will take measures to bring the subject before Congress, in order to accomplish the necessary reform. It is possible that some of the defects of the system may be reached by our own legislation. At present, the rich and the fortunate evade in a great degree the performance of military duty, while its expenses and sacrifices fall without abatement upon those members of society who are least able to bear them. If it be necessary to preserve the organization of so many of our citizens as are now enrolled, which is at least doubtful, it is at all events just, and consonant with the spirit of our institutions, that the taxes and burthens of the militia-service should be equalized.

* This portion of the governor's message was widely and severely criticised at the time, but the wisdom and justice of its suggestions are now generally acknowledged.—*Ed.*

† In accordance with this recommendation, the old State-Hall in Albany has been wholly devoted to this purpose. It contains the nucleus of a museum of the natural history of the state, and is the place where the State Agricultural Society holds its lectures and meetings.—*Ed.*

The laws by which judges of the county courts are authorized to interfere with the boards of supervisors, in the appointment of commissioners of deeds, county treasurers, and county superintendents of the poor, manifest an unjust and unwise distrust of the intelligence and virtue of the people, and a want of due regard to the sacredness of the judicial office. The democratic principles of the constitution demand the repeal of those laws. I also respectfully recommend that provision be made for the election of commissioners of deeds by the people.

The imprisonment of non-resident debtors, against whom no fraudulent practice or intent is alleged, operates injuriously to the interests of trade, and can be defended upon no ground which was not abandoned when the great principle was established in this state that the personal liberty of the honest but unfortunate debtor ought not to be subjected to the caprice or cupidity of an unfeeling creditor.

Foreigners entitled to be naturalized, and desirous of the privileges of citizenship, ought rather to be encouraged, than deterred, as they frequently are, by the onerous charges attending the requisite legal proceedings. Disabilities in relation to the acquisition and alienation of real estate by resident foreigners are a remnant of feudal principles, believed to be not only unnecessary for the security of the state, but inconsistent with the spirit of our constitution, and injurious to the general prosperity. It is worthy of your consideration, whether the time has not arrived for the adoption of a more liberal policy, and whether the temporary relief from these disabilities which has heretofore been granted, chiefly in favor of individuals, may not now be made general and permanent.*

I beg leave to refer you to the suggestions contained in my last message concerning the laws regulating elections. It is of vital importance to the security of our institutions, not only that our elections should be conducted with impartiality, and should thus express the will of the majority of the people, but that there should be entire and universal confidence in their purity. The acquiescence required of the minority can not be expected to be rendered with cheerfulness, if it be at all questionable whether the public will is truly expressed. I can not doubt that you will

* The reforms here suggested were mainly carried into effect by that and succeeding legislatures.—*Ed.*

feel it to be your duty to establish the necessary safeguards for the full and uninterrupted exercise of the elective franchise by all those, whether rich or poor, native or naturalized, whatever may be their employment or condition in life, to whom that inestimable privilege is guarantied.

The constitution provides that every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, shall be entitled to vote in the town or ward where he actually resides. High judicial authorities differ as to the meaning of the word resident. It is within the power of the legislature to define this term, and such a measure is highly necessary, as well to relieve doubts as to secure the enjoyment of the elective franchise to those of our fellow-citizens whose occasional or temporary employment in the navigation of our canals and rivers, and upon our public works, produces doubts concerning the places where they are entitled to vote.

The reorganization of the court of chancery, with an abridgment of the jurisdiction and patronage of the chancellor, is alike indispensable to insure the personal security of the citizen, and to preserve the harmony of our judicial system. The proceedings in that court are attended with vexatious delays and intolerable expenses. Questions of equity peculiarly demand the consultations of a bench, and the mass of appeals, interlocutory motions, and original causes, is too great for any one chancellor to hear and decide, consistently with a proper discharge of the duties required of him as a member of the court for the correction of errors. The benefits anticipated from the reduction of the number of justices of the supreme court, and the distribution of a portion of their powers and duties among eight circuit judges, have not been realized. I, therefore, respectfully suggest the expediency of dispensing with the offices of vice-chancellor and circuit judge, and of providing for amendments of the constitution which shall direct the appointment of three chancellors, with coordinate powers, and of additional justices of the supreme court. The collection of debts is unnecessarily delayed by forms, embarrassed by technicalities, and burdened with costs. The evils experienced might have been prevented, in a great degree, had the necessary rules of practice and pleading been established by

the courts themselves. It is worthy, however, of consideration, whether the power now exercised by the court of chancery, in reaching the equitable property of a debtor, may not be intrusted in a great degree to the common law courts, and whether the ruinous expense attending the foreclosure of mortgages in chancery may not be avoided by the more simple method of sale after advertisement, and after personal notice to parties having incumbrances on the mortgaged premises. The forms of pleadings are unnecessarily prolix, and dilatory and evasive pleading ought to be more effectually prevented. Parties should be allowed to perfect judgments in vacation as well as during the terms of the courts. The alienation of land should be facilitated by requiring all incumbrances and liens to be recorded or docketed in the county where the land is situated. The jurisdiction of justices' courts ought to be extended to litigated cases, where the amount involved does not exceed one hundred dollars. The compensation of public officers is generally derived from the equal contribution of those for whose benefit their services are rendered, but that of attorneys, solicitors, and officers of the courts of justice is unhappily often obtained from those whose condition ought rather to excite sympathy than expose them to additional burdens. The legislature which should, in a season of adversity like the present, diminish the expenses of legal proceedings, as far as can be done consistently with the full and perfect administration of justice, would advance the permanent usefulness of the profession of the law, promote the happiness of society, and deservedly obtain the gratitude of the people.*

It was represented to me, on the fifth of December last, by the sheriff of the county of Albany, that he had, on many occasions during several months previous, been resisted in performing his duty, and had been prevented from executing process of the supreme court, and that he had been unable to overcome the resistance with the unarmed force of his county. He thereupon applied to me to call out a sufficient military force to enable him to execute the process committed to him. Proofs were submitted to me, which went to show that the resistance was preconcerted and organized, and that it extended over a large portion of his county. The

* This extensive and radical plan of legal reform has since been fully carried out.—*Ed.*

nature and duration of the resistance complained of appeared to me to require the adoption of immediate measures for restoring the supremacy of the laws. Unwilling, however, to resort to the extreme remedy until every other measure had failed, I deemed it proper for the sheriff to sue out process in the name of the people against the resisters, and to make a further effort to perform his duty with the aid of the armed power of his county. Measures were taken at the same time to have in readiness a sufficient force to support the sheriff, if the efforts thus to be made should prove ineffectual. Information was subsequently communicated to me by him, that he had proceeded with the armed power of his county, and had been met by a large concourse of persons, sufficient in number to overpower him, and assembled with the obvious purpose of obstructing him in the performance of his duty. This information was accompanied by a renewed application for a military force. Still desirous to prevent, if possible, a resort to such force, I issued a proclamation, setting before the resisters the nature of their conduct, and the unhappy, but inevitable consequences of persisting in it, enjoining them to disperse, and appealing to all good citizens to assist in maintaining the supremacy of the laws. In order, however, to secure this result in any event, I directed, as required by law, a military force to proceed to the scene of resistance, and provided for a reinforcement, should it be found necessary. It is creditable to the citizens who had inconsiderately become involved in unlawful proceedings, that they dispersed very soon after these measures had been adopted, and the sheriff proceeded without additional military aid to execute the process of the law. It soon became manifest that no further organized resistance would be offered, and the militia were thereupon immediately withdrawn. Although the occasion was one to be deeply regretted, yet it is a source of satisfaction that a very large proportion of those engaged in the resistance were immediately convinced of the error of their proceedings, relinquished their designs, and manifested a cheerful and patriotic submission to the laws. It is also gratifying that this desirable end was attained with little public inconvenience, and without destruction of property or loss of life. To this result, the militia, by their alacrity, prudence, and good conduct, contributed in an eminent degree.

The resistance to the sheriff arose out of a controversy between

the tenants of the manor of Rensselaerwyck and its proprietor. The lands in that manor are held under ancient leases, by which mines and hydraulic privileges, rents payable in kind, personal services, and quarter sales, are reserved. Such tenures, introduced before the Revolution, are regarded as inconsistent with existing institutions, and have become odious to those who hold under them. They are unfavorable to agricultural improvement, and inconsistent with the prosperity of the districts where they exist, and are opposed to sound policy and the genius of our institutions. The extent of territory covered by the tenures involved in the present controversy, and the great numbers of our fellow-citizens interested in the questions which have grown out of them, render the subject worthy of the consideration of the legislature. While full force is allowed to the circumstance that the tenants enter voluntarily into such stipulations, the state has always recognised its obligation to promote the general welfare, and guard individuals against oppression. The legislature has the same power over the remedies upon contracts between landlord and tenant as over all other forms of legal redress. Nor is the subject altogether new in the legislation of the state. It was brought under consideration in 1812, by a bill reported by three jurists of distinguished eminence and ability. I trust, therefore, that some measure may be adopted, which, without violation of contracts, or injustice to either party, will assimilate the tenures in question to those which experience has proved to be more accordant with the principles of republican government, and more conducive to the general prosperity and the peace and harmony of society.*

A requisition was made upon me in July last, by the executive of Virginia, for the delivery of three persons as fugitives from justice, charged with having feloniously stolen a negro slave in that state. I declined to comply with the requisition, upon the grounds that the right to demand, and the reciprocal obligation to surrender, fugitives from justice, between sovereign and independent nations, as defined by the law of nations, included only those cases in which the acts constituting the offence charged

* A law was passed May 13, 1840, to provide for the settlement of these difficulties. Under it, terms of adjustment of all the disputes between the landlord and tenants were proposed; but the proposition was declined by the landlord.—*Ed.*

were recognised as crimes by the universal laws of all civilized countries; that the object of the provision contained in the constitution of the United States, authorizing the demand and surrender of fugitives charged with treason, felony, or other crime, was to recognise and establish this principle of the law of nations in the mutual relations of the states as independent, equal, and sovereign communities; that the acts charged upon the persons demanded, were not recognised as criminal by the laws of this state, or by the universal laws of all civilized countries; and that consequently the case did not fall within the provision of the constitution of the United States.

The governor of Virginia, in his last annual message, referred the subject to the consideration of the legislature of that state, and declared that my construction of the constitution of the United States could not be acquiesced in or submitted to. He added that, if it were allowed to prevail, and if no relief could be obtained against what he designated as a flagrant invasion of the rights of Virginia, either by an amendment of the constitution of the United States, or by the action of the legislature of Virginia, it might ultimately become the important and solemn duty of Virginia to appeal from the cancelled obligations of the national compact, to original rights and the law of self-preservation.

I confess my surprise that it should, in any part of the Union, be regarded as a new and startling doctrine that the constitutional power of the executive of any other state to demand the surrender of a citizen of this state, to be carried to the former and tried for an offence committed there, is limited to cases in which the offence charged is recognised as criminal by the statute-laws of this state, by the common law, or by the universal laws of mankind. Nor can I withhold the expression of my sincere regret that a construction of the constitution, manifestly necessary to maintain the sovereignty of this state and the personal rights of her citizens, should be regarded by the executive of Virginia as justifying, in any contingency, a menace of secession from the Union.

The subject is one which appertains to the executive department. The duties of that department in such cases are prescribed by the constitution of the United States, and not by the constitution or laws of this state. Nevertheless, the respect I entertain for the executive of Virginia, as well as the deference I owe to

the legislature of this state, induce me to transmit herewith the correspondence which has taken place.*

Our fellow-citizens in various parts of the state will very justly call your attention to the condition of the currency. We are a commercial people. We are rendered so by the location of our country, its physical formation, its variety of climate and productions, and its internal communications by land and water; by the operation of republican institutions and equal laws; by our wants; by our resources; by our enterprise; by the mutual confidence arising from moral and intellectual cultivation; by the intercourse existing among the citizens of the several states, and by our relations with foreign nations. The federal government has heretofore encouraged commerce by entering into commercial treaties, by establishing a navy, by reducing imposts, and by improving rivers and harbors on our lakes, as well as on the seaboard. The legislatures of the several states have seconded this policy by increasing the facilities for trade. The promotion of commerce in all its branches affords the most effectual encouragements to agriculture and manufactures, because commerce is only an exchange of productions. The wants of one region are supplied by the labor of another, and thus the industry of all is rewarded. Our internal commerce knows no political or geographical lines. It pervades every region, seeking and exchanging the surplus productions of every department of industry. To effect this exchange, a currency or medium is indispensable, and it should everywhere have the highest attainable uniformity of value. A mixed currency, composed of coin and paper redeemable in coin, has unavoidably resulted from the condition of our country and our intercourse with foreign nations. That such a currency is far better than one exclusively metallic, is proved by contrasting the general prosperity of the countries in which the former is employed with the condition of those which use only the precious metals. But a mixed currency attended by the disadvantage of a liability to expansion beyond the legitimate wants of trade, and in order to prevent such expansions as far as possible, and mitigate their evils, must be subjected to regulation. It is a consequence of the independent action of the legislatures of the several states that the paper-

* See Official Correspondence, "Virginia Controversy," p. 449, Vol. II.

money issued under their authority must, in the absence of adequate regulation, be unequal in security and in convertibility, and that the amount issued must often be disproportioned to the exigencies of trade. Heretofore the federal government has discharged the responsibility of such regulation; but, for some time past, Congress has made no provision for that important purpose, and the currency of the country has been supplied by paper-money issued under the authority of twenty-six different states, in amounts limited by other wants than those of trade, and regulated upon other considerations than those which regard the general interests of the whole country. The exchange of productions between distant parts of the country is burdened with ruinous expenses, and the prompt collection of debts is rendered impossible. Internal commerce has suffered a check, and derangement is felt in every department of business. The expense, losses, and sacrifices, resulting from the embarrassments of trade, fall ultimately upon those engaged in productive industry, and cause a depreciation in the value of labor, of the fruits of the earth, and of the soil itself. In the present instance, the evils have been aggravated by a long and severe derangement of our foreign commerce. As if the neglect of its appropriate and important functions were not enough, the federal government has contributed to increase the general embarrassment, by manifesting a persevering hostility to the institutions of the states, and has disturbed the general confidence by efforts to introduce a metallic currency. The introduction of such a currency is impracticable, and would be unjust if it were practicable, because it would require our citizens, in the absence of necessity or adequate motive, to reduce the value of labor and property to the depreciated standard of a specie circulation. To the people of this state, and to all who resort to her great commercial market, the measures adopted by the federal government to carry this project into effect have been productive of unmitigated evil, while the earnestness with which our fellow-citizens in some portions of the Union sustain those measures, proves that they endure the same evils with a fallacious hope of being able to transfer to themselves a considerable portion of the commerce which is now enjoyed by New York. I trust, therefore, that these measures will receive no support from us, but that whatever influence the sanction of the legislature may have, will be exerted

in favor of a policy that shall immediately restore the prosperity of the Union, and preserve the commercial advantages of our state. The currency heretofore established in this state, through the agency of safety-fund banks, had a safe and wholesome action while the currency of the nation was regulated by the federal government. But that system of banking became odious as a monopoly, and the unequal distribution of its privileges, and the corrupting tendency of applications for legislative charters, spread discontent and alarm throughout the state. From these circumstances resulted the passage of the law which authorizes the business of banking to be carried on by associations without charters. Either of these systems would, under ordinary circumstances, have furnished a currency for this state, which, within our own boundaries, would have been uniform and readily convertible into specie, and, as exchanges were generally in favor of this state, would have been equally useful in other states. Although our banking institutions have not, as on a former occasion, suspended payment of specie, the farmer, the mechanic, and the merchant, are obliged to receive bank-notes whose full value can not be realized without presenting them for redemption at a distant place. The commerce of the state is embarrassed, and agricultural and manufacturing industry are oppressed, by the extortion of brokers and usurers. However the federal government may choose to neglect its proper functions, the evils of our domestic currency are within your reach, and I trust they will be the subject of speedy and effectual reform. It is a high privilege to furnish a circulating medium, whether that privilege be conferred by charter, or enjoyed under the more equal operation of a general law. It partakes of the responsibilities and dignity which belong to the sovereignty of a state, and its profitableness has been evinced by extraordinary dividends and accumulations. It is, therefore, not demanding an unjust or unreasonable equivalent to require those who enjoy this privilege to maintain a sound and uniform currency. Various plans have been suggested to accomplish this important object. One of these contemplates the employment of the bank fund, with equivalent contributions from associations formed under the general law, to redeem in the city of Albany the bills of the several banks. It is probably a sufficient objection to this plan, that it would divert the bank fund from its legitimate object and jeopard its security. A sec-

ond system is to require the country banks to redeem their notes either in the city of New York or in the city of Albany. The objection to this plan is, that it would be unjust to require a banking institution to provide funds for paying its liabilities at two places, at its own counter and elsewhere. The force of this objection is weakened by the fact that the operations of trade carry the currency of the country to the principal mart. If the amount of issues collected at the place assigned for redemption were to be made known to any bank, it could be required to transmit funds to that place after a reasonable interval, and thus be relieved from the necessity of providing an equal amount to meet demands at home. If this system should receive legislative sanction, the comptroller might be required to apply the safety-fund, without delay, to the redemption of the balance which a bank had neglected or refused to pay after receiving the requisite notice, if such balance did not exceed a just proportion of the whole fund. This system has been partially in operation, and is understood to have been very successful. These suggestions are submitted in the hope that they may be useful in your discussions of this important subject.

The necessity of a revision of the general banking law, as rec ommended in my annual message at the last session, has greatly increased during the past year. It is alleged, and with too many evidences of truth, that the stock deposited with the comptroller as a basis for circulating notes has been in some instances purchased or paid for with the notes issued upon the same stock. Such a proceeding is manifestly an evasion of the statute, and care should be taken to guard against it for the future. Some of the associations have issued post-notes as currency. This practice is unquestionably a violation of the spirit of the law, reprehensible in itself and fraudulent against the community.

It ought not to excite surprise that the system of free banking should in its commencement have been embarrassed by difficulties, or that institutions should occasionally have been established where they were not needed. When we reflect that we have been for thirty years improving the system of banking by incorporations, we shall be satisfied that we ought to exercise forbearance toward one which has just come into existence. In the midst of a pecuniary revulsion only two of the associations have been closed, and they have occasioned no loss to the community.

There is, therefore, no sufficient ground for doubting the final success of the system, with such modifications as experience may from time to time suggest. Among these there should obviously be a plan for the redemption of the notes of the associated banks, similar to that suggested in reference to the safety-fund banks. While the system affords all the requisite facilities and security for sound and safe banking, it is obviously so much more equal in its operation, and so much less liable to be perverted to political designs, that I trust you will omit no effort to correct its defects and insure its successful operation.*

Permit me to express a confident hope that you will not add longer delay to what has already unfortunately occurred in filling the vacancy in the representation of this state in the senate of the United States.† The action of the federal government, always important, has within a few years past excited unusual interest. Under the uniform system of policy maintained since the foundation of the government our country long enjoyed a career of prosperity, interrupted only by brief intervals, in which that policy was counteracted by circumstances arising out of the violation of our rights by belligerent European nations. The country has experienced a great change within the last three years. A pressure is felt in all its interests and throughout its whole extent, and every effort to rise has been followed by greater depression. The federal executive, in his recent communication to Congress, extends no hope of relief from these evils, but urges the adoption of measures, the very discussion of which has produced only the most disastrous consequences. We are an industrious, economical, enlightened, and virtuous people. Our prosperity is hindered by no hereditary inequalities of political rights or social condition. We have enjoyed peace and tranquillity for twenty-five years. If then there be any virtue in forms of government, ours, if well administered, ought to secure national prosperity and general contentment and happiness. The power and influence of the executive department of the federal government are greatly increased, and the history of that government for the last few years exhibits a constant struggle on

* The most important of these suggestions were adopted, and the currency of the state was restored. See Laws of 1840, chaps. 202 and 363.

† This vacancy had existed since March 4, 1839, owing to the refusal of the senate to meet the Assembly in joint meeting for the purpose of filling it. The Hon. N. P. Tallmadge was subsequently elected.—*Ed.*

the part of the executive to control the opinions of the representatives of the people. His appeals from their decisions have been tried by popular elections for the first, second, and third time. In such trials the representative has to contend singly and unaided against the combined influence and patronage of the government. Not content with the already overshadowing powers of the national government, the president has arraigned before Congress the institutions of the states and the states themselves, and has discussed their domestic concerns with as great freedom as if they were responsible to the federal government, and were not sovereign in the conduct of their municipal affairs. These innovations furnish a new demonstration of the error of those who, at the adoption of the constitution, supposed the federal government too unstable, and the power and influence of the executive department too limited. The time seems to have arrived, when measures to restrain the increasing power of the executive and maintain the necessary independence of the states should no longer be delayed. Among such measures none would be more safe, more effectual, or more in harmony with democratic principles than amendments of the constitution of the United States, which should vest in Congress the appointment of the chief financial officers of government, and limit the tenure of the presidential office to a single term.

It is a source of the highest satisfaction, that notwithstanding all adverse circumstances, the prosecution of works of internal improvement with private capital has not been arrested during the past year, but has been carried on with patriotic and praiseworthy assiduity and with great success. That section of the New York and Erie railroad, about fifty-five miles in length, which extends from Tappan, on the Hudson river, to Middletown in Orange county, will soon be completed. The result will, it is hoped, vindicate the whole enterprise from unjust prejudices and contribute to hasten its consummation. The Long Island railroad has been extended far into the interior of the island. In consequence of the completion of the Utica and Syracuse and the Syracuse and Auburn railroads within the past year, only one hundred miles of railroad remain to be finished before our citizens will enjoy the facilities of a passage by steam power from one extremity of the state to the other, and the steam navigati

of the remote western lakes will be connected with the steam navigation of the Atlantic. The completion of the railroad from the coal mines at Blossburg, in Pennsylvania, to the termination of the western branch of the Chemung canal, is an event of great importance to the central part of the state, and among its beneficial results we may anticipate an increase in the revenues of that canal.

The various surveys directed by the legislature at its last session, with the design to improvement of the northern tributaries of the Hudson, to an extension of the Chemung canal to the line of the state of Pennsylvania, to an extension of the Black River canal to the St. Lawrence, and to the construction of a canal in the valley of the Connewango, have been successfully prosecuted. I transmit brief statements which have been submitted to me by the engineers engaged in the two first-named surveys. I am certain you will not withhold whatever of encouragement and support can be extended, consistently with the financial condition of the state, to our fellow-citizens who feel an interest in these several improvements. I recommend a continuation of the survey of the northern branches of the Hudson as necessary to a more perfect acquaintance with the extensive region of country which will be opened to commercial intercourse by the improvements contemplated in that section of the state.

The general policy of prohibiting the transportation of freight on railroads which run parallel to the canals is not altogether without question. There can however be but one sentiment as to the expediency of suspending the prohibition during the season in which the navigation of the canals is arrested by ice. A prohibition at that season operates injuriously to the agricultural interest, and tends to produce a monopoly of the necessaries of life, at a time when want and misfortune are felt most severely by the inhabitants of our populous cities.

Apprehensions prevail that the public credit may become too deeply involved in the prosecution of works of internal improvement. The project of enlarging the Erie canal was adopted by the legislature of 1835. It arose from the necessity of repairing such parts of the canal, especially the locks and aqueducts, as were worn by time and use. With the great increase of trade, delays and inconveniences were experienced in consequence of the limited dimensions of the canal and the want of double locks.

It was manifest, too, that the canal had not completely accomplished the objects of its construction, inasmuch as a considerable portion of the western trade continued to seek a market by other routes. It seemed important, therefore, to increase its capacity and thereby reduce the expense of transportation. It was maintained that by the use of boats of one hundred tons, instead of thirty tons burden, the expense of transportation would be reduced fifty per cent. In this view the expediency of the enlargement was incontrovertible, if the expense should not be disproportionate, and the requisite funds could be provided without injustice to other claims upon the public munificence. The act of 1835 directed the enlargement to be undertaken when the canal board should be of opinion that the public interest required the improvement, and its extent was submitted to their discretion. It will not, I hope, be deemed disrespectful to remark, that the first step in this great undertaking, the delegation of the legislative power to a board not directly responsible to the people, was a departure from the spirit of the constitution, so unfortunate in its consequences, that it should remain a warning to all future legislatures. The expense of the enlargement is now estimated at $23,402,863; yet the law by which it was authorized passed without any estimate having been submitted to the legislature, and with scarcely any discussion. If completed on the present scale, the canal will surpass in magnitude every other national work of internal improvement; yet all the responsibilities in reference to the dimensions and cost of the enlargement seem to have been cast off as unworthy the consideration of the legislature. The same act provided that after the year 1837 the expenditures upon that work should be so limited as to leave, without reference to auction and salt duties, an annual income from the canal revenues of at least three hundred thousand dollars, over and above all ordinary repairs and expenditures on the Erie and Champlain canals.

In 1836, for the first time, an estimate of the expense of the enlargement was submitted to the legislature by the canal board, by which it was calculated at $12,416,150 17. The canal commissioners had previously estimated the expense of the Genesee Valley canal at $1,890,614 12, and that of the Black River canal at $1,068,437 20. With this information before them, the legislature of 1836 increased the annual income to be applied to the

uses of government to four hundred thousand dollars. They also directed the construction of the Genesee Valley and Black River canals, and provided that their deficiencies of revenue should be paid out of the treasury, and authorized a loan of the credit of the state to the New York and Erie railroad company to the amount of three millions of dollars.

The subject was again agitated in 1837. The canal board reported that they did not believe the enlargement could be completed at the cost before estimated, for the reason that the plans of some of the mechanical work had been changed, and that parts of the line had been, and others probably would be, varied. They stated that the cost of construction was greater than when the estimates were made; that they did not believe, if prices were the same as at the time the estimates were made, that the cost of the work would exceed the estimates, except the increase occasioned by changes of the plans or of the line. They added that they could not form an opinion of the additional cost of the work beyond the estimates, but they did not believe it would amount to a large sum, exclusive of damages; that the amount would greatly depend upon the prices of labor and provisions, and that there had been no estimate of damages to individuals. They also gave it as their opinion that it was for the interest of the state to proceed with the enlargement so that it might be completed sooner than was contemplated by the act of 1835. It is evident that this report did not shake the confidence of the legislature in the ability of the state to complete the public works, because the house of assembly rejected, by an almost unanimous vote, a resolution contemplating the repeal of the laws directing the construction of the Genesee Valley and Black River canals.

In 1838, the late executive recommended a more speedy enlargement of the Erie canal. It was obvious, from the condition of the finances of state at that time, that this could not be effected without contracting a debt. The assembly responded to this recommendation by passing a bill directing the commissioners of the canal fund to borrow on the credit of the state one million of dollars for that object. The senate amended the bill so as to authorize the borrowing of four millions of dollars instead of one million. In this shape the bill became a law. This law required the canal commissioners to put under contract, with as little

delay as possible, such portions of the work as were mentioned in their report of that year, and such other portions as, in the opinion of the canal board, would best secure the completion of the entire enlargement with double locks on the whole line.

It was reserved for the assembly of 1839 to discover that the estimates which had been the basis of such important legislative action during the preceding three years had been widely erroneous. The canal commissioners were required to review their estimates of the unfinished works. They reported that the expense would be as follows:—

Of the Erie Canal enlargement	$23,402,863 02
Of the Black River canal	2,141,601 63
Of the Genesee Valley canal	4,900,122 79
Making and aggregate of	$30,444,587 44

instead of $15,375,201 49, the original estimated cost of those works.

The practice has recently obtained to some extent of testing the expediency of any proposed improvement by adding to its estimated cost the real and nominal indebtedness of the state, together with the sums for which the credit of the state is pledged or in any event authorized to be pledged, and of assuming that the aggregate will be the debt of the state if the proposed improvement should be adopted. This test has also been applied to the undertakings in which the state has already engaged with the following result:—

The existing canal debt for works completed (exclusive of the Erie and Champlain canal debt, for the payment of which a fund has accumulated)	$3,476,839 66
The debt of the general fund	2,472,217 92
The aggregate sum for which the credit of the state has been heretofore pledged and directed to be pledged in aid of canals and railroads	4,610,000 00
Estimated cost of the enlargement of the Erie canal, and the construction of the Genesee Valley and Black River canals	30,444,587 44
Making an aggregate of	$41,003,645 02

The confidence of the people in the policy of internal improvement, has sustained a severe shock from the discovery that the state was committed by the legislature to an expenditure of thirty millions of dollars, for the completion of three works alone, upon estimates of the same works rising only to about fifteen millions; and calculations exaggerating the liabilities of the state to forty millions of dollars have not been unsuccessful in adding imaginary

alarm to the consequences of past errors, in themselves sufficiently embarrassing.*

The only act which was passed at the session of 1839, appropriating money for purposes of internal improvement, was one directing the sum of seventy-five thousand dollars to be expended in improving the navigation of the Oneida river. With the exception of an act authorizing a variation in the plan of constructing the locks on the Genesee Valley canal, by which a saving of about five hundred thousand dollars will be made in the construction of that work, and several acts directing surveys in various parts of the state, there was no other legislation during that session upon the subject of internal improvement. Aside from the duties prescribed by these acts, all that the agents of the state have been called to do in relation to internal improvements, has been to comply with legislative directions, given previously to the session of 1839, and to provide, in pursuance of pre-existing laws and pre-existing contracts, for the expenses incurred in the prosecution of the public works by the canal commissioners.

Such are the circumstances under which the public interests have been confided to our care. The discovery of the errors of our predecessors, has happened at a time when confidence is impaired, property depreciated, the sale of real estate arrested, and the currency disordered. At such a period the financial difficulties of the state are liable to be exaggerated, its resources undervalued, and its liabilities magnified.

In ascertaining the true financial condition of the state, there may be deducted from the debt of the general fund, the sum of $1,080,000 borrowed from the canal fund. Both of these funds being the property of the state, this is a loan made by the state to itself. We may also deduct from the liabilities of the state the pledges of its credit to railroad and canal companies, these pledges having been made upon conditions, as is understood, which afford an ultimate indemnity to the state. Regarding the Erie and Champlain canal debt as extinguished by the means provided for its redemption, the actual debt of the state, as it stood at the close of the last fiscal year, would then be as follows:—

* It will be remembered that, among the political charges against the administration of Governor Seward at this time, was, that he was *creating* a public debt of forty millions of dollars.—*Ed.*

Debt of the general fund		$1,392,217 92
Debt of the lateral canals completed		3,476,839 66
Debt contracted for unfinished works, viz.		
Enlargement of Erie canal	$2,500,000 00	
Black River canal	591,446 10	
Genesee Valley canal	2,000,000 00	
Oneida river improvement	25,000 00	
		5,116,446 10
Aggregate state debt		$9,985,503 68
But there remains on hand a balance of funds borrowed for the construction of the Genesee Valley canal	$939,604 48	
For Oneida river improvement	25,000 00	
		964,604 48
State debt over funds in hand		$9,020,899 20

The amount required to complete the enlargement, as ascertained by deducting the sum already expended, and the sum borrowed and remaining in hand at the close of the last fiscal year from the last estimate made by the canal commissioners, would be	$19,292,886 93
To complete the Genesee Valley canal	2,900,122 79
To complete the Black River canal	1,550,155 53
Aggregate required to complete the canals, according to the last estimates	$23,743,165 25
The interest on this sum, at 5 per cent., would be	$1,187,158 26

The surplus revenue from the canals during the past year was $1,057,802 74. The interest, at five per cent., on the sum estimated as necessary to complete the canals, to wit, on $23,743,165 25, would be $1,187,158 26, exceeding such surplus revenue by the sum of $129,355 52. The surplus revenue would, with the ordinary increase, furnish sufficient funds for completing the unfinished works, if applied exclusively to that purpose. But, by the laws of 1835 and 1836, an income of $400,000 was directed to be retained annually from this surplus revenue, and the sum of $126,250, which is required to pay the interest on loans which had been contracted for the enlargement of the Erie canal and the improvement of the Oneida river, at the close of the last fiscal year, is chargeable upon the canal tolls. Deducting these items, there is left a surplus of $531,552 74, applicable to purposes of internal improvement, which leaves a deficiency of $655,605 52 in the amount necessary to meet the interest on the sum required to complete the works now in progress according to the corrected estimates. Stating the result in another form, the net annual revenue of the state, applicable to purposes of internal improvement, without taking into consideration the anticipated increase of canal tolls, would sustain a debt of only

$10,631,054 80; while the sum of $23,743,165 25 would be required to complete the public works.

The state, however, may confidently anticipate an increase of canal tolls, and consequent increase of revenue from the Erie and Champlain canal fund. This increase, although not contingent, is of uncertain amount. The increase since the year 1826 has averaged about eighty thousand dollars annually. This augmentation of tolls must progress with the increase of commerce upon the western waters, and would be greatly accelerated by the enlargement of the Erie canal.

Various opinions are entertained as to the future net annual increase of the canal tolls. In 1838, the canal commissioners reported to the legislature that, in their opinion, the aggregate tolls would reach the sum of three millions of dollars within a few years after the completion of the enlargement. Without attempting to speculate upon a point so incapable of demonstration, it is sufficient to remark, that every opinion admits the certainty of an increase to an amount that will be adequate, at some future period, to pay the interest upon the largest sum which the exigencies of the state require; while no calculation that is based upon the actual increase of canal tolls, during the last three years alone, will justify the prosecution of the works now in progress with the rapidity which, in the opinion of the legislature of 1838, was warranted by the fallacious estimates of the canal commissioners. The question then arises, what, under these circumstances, shall be the policy of the legislature?

Waiving in this place the consideration of remote consequences, it may be asserted that the public interest does not now demand, nor would the immediate welfare of the people admit an abandonment of the system of internal improvement. During the severe pressure we have experienced, the industry of the citizen has been stimulated, and the wages of labor, the prices of the products of the earth, and the value of property, have been sustained by expenditures in the prosecution of this system. The sudden arrest of such expenditures, and the discharge of probably ten thousand laborers now employed upon the public works, at a time when the circulation of money in other departments of business is so embarrassed as almost to have ceased, would extend throughout the whole community, and with fearful aggravation the losses and sufferings that, as yet, have been in a great

measure confined to the mercantile class. These losses and suf ferings would fall with peculiar severity upon the agricultura portion of the community, because the laborers, if discharged, would generally seek subsistence in agricultural pursuits, instead of being, as they now are, consumers of the abundance which contributes to produce a depreciation of the value of our staple productions. Nor does it appear that our fellow-citizens in vari ous parts of the state, whose desires for the advantages of internal improvement have been so intensely excited and so earnestly expressed, have determined to forego these advantages, because precipitancy has characterized the past management of public affairs, and because their hopes, on the eve, as they supposed, of being realized, have encountered new and more embarrassing discouragements.

The policy indicated by public sentiment, and demanded by the circumstances of the times and the condition of the state, is to retrench the expenditures upon our works of internal improvement, and prosecute the system with moderation and economy. It is essential not only to the rightful action but to the stability of the government, that the will of the people, when clearly expressed, should be obeyed by their representatives. This principle is peculiarly important in relation to questions of revenue and expenditure. Public opinion is, moreover, manifestly right. The existing and anticipated revenues of the canals must be, as heretofore, the basis of any new loans which the legislature shall see fit to authorize, since taxation for purposes of internal improvement deservedly finds no advocate among the people. These revenues have been disturbed in the general derangement of pecuniary affairs, and can not now be the basis of that safe calculation, without which it is hazardous to pledge to a great extent the credit of the state. Nor can we resist the evidence that the credit of some of the states is less firm than heretofore. It is worthy, therefore, of serious consideration, whether our own might not be impaired by offering large amounts of stock in a market already filled with American securities. It is doubted whether the Erie canal would not have been adequate to all useful purposes, if the scale of enlargement had been much less extensive than that fixed by the canal board; and it is cer tain that smaller dimensions, or a more tardy enlargement, would have been adopted, had the estimates of the canal commissioners

presented truly the cost of the work. You will, however, find the question of reducing its dimensions embarrassed, by the fact that about one half of the labor has been accomplished or put under contract. The parts of the canal which are peculiarly expensive are the aqueducts and locks, and these have engaged the earlier attention of the commissioners in consequence of the decay of old structures, which threatened a suspension of navigation. It is evidently impossible now to secure, with equal expense, the same advantages that might have been obtained by adopting a more limited scale of enlargement in the first instance. It is, however, respectfully submitted whether it would not be expedient to refer the plans of all the works in progress, including the enlargement of the Erie canal, to competent engineers, to ascertain what portions of the same may be delayed without detriment to the public interest, and what expense may be saved by executing other portions in a manner equally effective and durable, but more plain and economical than that hitherto pursued. It seems quite certain that if the legislature had enjoyed the services of a board of internal improvement, including competent engineers, no such delusive estimates would have become the basis of legislative action. I would recommend the establishment of such a board as one of the first measures for retrieving our former position. For the purpose of guarding against a dangerous increase of debt, and the possibility of taxation, I respectfully recommend that all issues of stock shall be so limited that the interest on the whole debt of the state shall at no time exceed the surplus revenues, and that the increase of those revenues be relied upon for the ultimate extinguishment of the debt. There is reason to believe that the adoption of this principle would be sustained by the people, and it would place our credit on the most impregnable ground. Although the effect might be to delay for a season the progress, it would insure the completion of those great works in contemplation in different parts of the state, and which a very large portion of our fellow-citizens justly continue to regard with unabated interest.

It is proposed in some quarters to effect the necessary retrenchment by discontinuing the Genesee Valley and Black River canals, and by abandoning such of the auxiliary canals already completed as can not, by increasing the rates of toll, be made to yield a revenue equal to the interest on the cost of their con-

struction. It might well be doubted whether the Genesee Valley and Black River canals would have been undertaken thus early had true estimates of their cost been submitted to the legislature, and had the prospective engagements of the state been truly understood. If we should consider the sacrifice that would be made of the sums already expended, and the claims for damages which might reasonably be apprehended if these works should be discontinued, such a measure would be as questionable on the ground of economy as objectionable on principles of justice to the large portions of the state interested in their completion. The value of property in their vicinity has undoubtedly greatly increased, business has adapted itself to the facilities they have created, and none but the most disastrous consequences could follow their abandonment.

The construction of the several auxiliary canals was authorized without a confident expectation of immediate revenue. The legislature deemed it just to equalize the benefits of internal improvement by means of important lateral works, where the revenues to be derived from them directly, and their contributions to the Erie canal, might be expected to be equivalent, after a reasonable lapse of time, to the interest upon the cost of their construction. It was assumed, also, that the system might be extended, so long as the revenues of all the public works should be found sufficient to defray the expenses of their main course, yield a surplus adequate to pay the interest upon the whole debt contracted for their construction, and eventually discharge the principal. These limits have been observed in the construction of all the public works which have been completed, although fears are expressed lest they may be passed in the undertaking, now in progress. There would therefore be gross injustice in abandoning the Oswego, the Cayuga and Seneca, the Chemung, the Crooked Lake and the Chenango canals, and thus visiting upon the regions enriched by them the consequences of errors of calculation in regard to works undertaken subsequently to their completion. It is true that each of these canals, considered separately from the Erie canal, yields a revenue insufficient to defray the interest on its cost. But their revenues are increasing, and their deficiencies are diminishing. The rates of toll on those canals are the same which are established upon the Erie and Champlain canals. Unless a universal law of trade should be

reversed, the business, now insufficient, and consequently the revenues, would be diminished by raising the rates of toll. A ruinous depreciation of property in the regions traversed would inevitably follow, and the legislature would soon be obliged to reconsider a measure of such questionable policy and such absolute injustice. Nor is it to be forgotten that these works have scarcely yet had a fair experiment. The increase, however, in the revenue of the Oswego canal during the past year, justifies the belief that it will soon defray the interest upon its cost. The laws authorizing the construction of the lateral canals looked forward to an extension of their trade by connecting them with similar improvements beyond the state. However distant it may be, that connection must eventually take place. These canals will then no longer be regarded as exhausting the wealth of the state. Their construction will be vindicated not only by their promotion of the general prosperity, but also by their liberal contributions to the public treasury.

In my annual message at the last session of the legislature, I recommended the rapid prosecution of the enlargement of the Erie canal. I commended also to favorable consideration the New York and Erie railroad, and a railroad from Lake Champlain to the St. Lawrence, as works of great public importance and worthy, if they could not be otherwise speedily accomplished, of being constructed at the expense of the state. My opinions in relation to the public importance of these and all other improvements commended on that occasion are unchanged. I am moreover convinced that the difficulties as well as the cost of these improvements have been as greatly exaggerated as their probable revenues have been undervalued, and that the just claims of the portions of the state interested in their construction have been overlooked. It is no longer doubtful that railroads may be constructed by the state as suitably as canals, and that the public convenience requires that the former as well as the latter should as far as practicable be controlled by the state. It is probably unnecessary to remark that the recommendations then submitted to the legislature to expedite the enlargement of the Erie canal and to provide for the immediate completion of the works before mentioned proceeded on the assumption of the substantial correctness of the various estimates of the canal commissioners, which are discovered to have been so very erroneous.

Our fellow-citizens residing in the portions of the state which will be traversed by the railroads before mentioned, are alarmed by the great expense of the enlargement of the Erie canal, while those interested in the accomplishment of the latter undertaking regard with disfavor other applications for legislative aid. These jealousies, the obvious tendency of which is the disappointment of every claim upon the public munificence, have given new confidence to the opponents of all improvements. I can not doubt that your views and policy will be comprehensive and magnanimous, and will have reference not to local or temporary interests, but to the general and lasting prosperity of the state. I confidently hope that the unexpected discovery of the extent to which the engagements of the state have been carried by former legislatures may produce such moderation on the part of those who claim to share in the public munificence, such concessions of local interests, and such convictions of the importance to the whole state of the improvement of each section, as to enable you to adopt a plan of fiscal operations which will reinvigorate the public credit, and effectually secure the completion, without unnecessary delay, of each of the important works before mentioned. The retardation which has become necessary ought by no means to be considered as an abandonment of the policy of internal improvement. It is the fortune of enterprise to encounter obstacles and delays in the attainment of even demonstrable results, and certainly no undertaking so vast as our system of internal improvement was ever more eminently successful, or encountered obstacles less serious than those which now check its prosecution.

The present crisis has produced renewed opposition to the entire system. It is boldly denounced as unconstitutional, foreign to the legitimate sphere of legislative action, destructive of the liberties of the people, and ruinous to their welfare. The specious theory is promulgated that the duration of national existence is divisible into periods corresponding with generations of men, and that the state has at no time a right to undertake the construction of works which will leave a charge upon a subsequent generation. It is a necessary consequence of these principles that the entire system must be abandoned, and that the obligations assumed in its prosecution may be cast off by subsequent generations. These principles have been boldly avowed, and have tended to impair

the confidence of mankind in the integrity and good faith of the people of this state, but they derive no support from our history. Reason and experience teach that every human society has a continuous identity susceptible of indefinite prolongation, and incapable of division. The citizen of every state feels, as it has been well said, that although mortal himself, he is part of a community that may, and he hopes will, be perpetual. He is conscious that every important measure of government in which he may be engaged is in some degree the result of causes anterior to his own existence, and may be productive not only of consequences immediately affecting himself and his contemporaries, but of others pervading the whole state, and distant as its dissolution. The daily labors of life, although stimulated by immediate necessity, are cheered by the expectation of distant good. The generous efforts of public benefactors, by whose inventions, instructions, and achievements, our race has been raised from the savage condition, through every imperfect social state, to the freedom and dignity of self-government, have always been directed to objects more remote than those of immediate or personal advantage. Benevolent desires for the welfare of those who shall succeed us produce not only individual and domestic exertion, but social action in every form adapted to relieve the necessities or promote the welfare of mankind. Animated by such impulses, and aroused to such efforts with reference to distant periods, men seem to approximate here toward the dignity of character to which our race is destined in a future state. The susceptibility to such impulses and the power of making such efforts are among the strongest proofs that such a state awaits us. The human heart knows few passions stronger or more universal than the desire to be remembered when we shall have ceased to exist, and it estimates the value of fame by the lapse of time through which that fame may endure, and the portion of the earth it may pervade. The motives and achievements of the Revolutionary age knew no such miserable bounds as those now prescribed. Our national independence was sought and obtained not alone for those who achieved it, nor for one generation only, nor for a narrow cycle of years, nor for any period, but for all generations, and for all time. Our republican institutions were designed at their foundation for not only two millions of American people, but for us, and for as many millions as shall in

all time rise up and demand their protection. No citizen can be deprived of that protection because he was not of the generation by which it was guaranteed, and no disloyal citizen can excuse his delinquency by pleading a limitation of allegiance. In the great struggle for independence the inquiry was not raised, what generation should sustain the expense of the conflict? During the period of almost sixty years occupied in paying the debt which was incurred, no citizen questioned its justice. The principle of internal improvement derives its existence from the generous impulses of the Revolutionary age. It regards the future welfare, prosperity, and happiness of the people. Its agency is everywhere salutary in encouraging emigration and the settlement and improvement of new lands, in augmenting national wealth, in promoting agriculture, commerce, manufactures, and the diffusion of knowledge, and in strengthening the bonds of our national Union. It is recited in the Declaration of Independence, as one of the wrongs committed by the king of England, that he had endeavored to prevent the population of these states, and for that purpose had obstructed the laws for the naturalization of foreigners, had refused to pass others to encourage their migration hither, and had raised the conditions of new appropriations of lands. The Father of his Country could have had none of the modern skepticism, when, in his first message to Congress, he recommended a facilitation of the intercourse between distant parts of the country, by a due attention to the postoffice and post-roads. The population of the United States was confined for almost two centuries to the Atlantic coast, but the mighty mind of Washington perceived that a region far more extended, fertile, and salubrious, lay beyond the borders of the thirteen states; that inasmuch as the sovereignty of the Union was distributed among the cultivators of the earth, the political power of the government would find a centre in that region; that if the natural barriers between that region and the east should remain unchanged, the west would at no distant period cast off its union with the maritime states; but that if the natural barriers could be surmounted by roads and pierced by canals, connecting the inland navigation of lakes and rivers with tide water, the wealth and population of the whole country would be vastly increased, and the states be bound together in an indissoluble union of interest and affection. Imbued with these sentiments, he stopped

not in his farewell address to discuss or to recommend his favorite policy, but boldly predicted, as a certain event, that progressive improvement of interior communication by land and water, the auspicious results of which are only just beginning to be realized. It is a fact as interesting as it is instructive that the solicitude of the father of his country knew no rest after the achievement of her independence, but passed directly from the cares of that great struggle to the greater and even more glorious work of strengthening the union of the states, and perpetuating their liberties. In 1783, immediately after the close of the war, he proceeded up the difficult navigation of the Mohawk to Fort Stanwix, now the site of the town of Rome, and crossed to Wood creek, which empties into Oneida lake and affords an imperfect communication with Lake Ontario. The noble and patriotic sentiments inspired by his observations were thus expressed: "Taking a contemplative and extensive view of the vast inland navigation of the United States, I could not but be struck with the immense diffusion and importance of it, and with the goodness of that Providence who had dealt his favors to us with so profuse a hand. Would to God we may have wisdom to improve them!" The connection of Lake Ontario with the Hudson by perfect canals, instead of the difficult and obstructed navigation of the Mohawk and Wood creek, the mingling of the waters of Lake Erie with those of the same noble river by means of a canal, the conversion of Fort Stanwix into the centre of a constellation of cities and villages, with all the consequent benefits of those improvements, reflect additional glory upon the fame of Washington, and prove that the efforts of this state in fulfilment of his noble aspiration have been crowned with the blessing of that Great Being to whom it was addressed. His contemporary, Jefferson, one of the most sagacious of American statesmen, as well as one of the most ardent votaries of liberty, pronounced roads, canals, and rivers, to be great foundations of national prosperity and union, and recommended to Congress the policy of applying the surplus revenues arising from imposts upon luxuries and from the sale of the public lands to the great purposes of public education, the improvement of the navigation of rivers, the construction of roads and canals, and such other objects of public improvement as it might be thought proper to add to the constitutional enumeration of federal powers; operations by

which, as he well remarked, new channels of communication would be opened between the states, the lines of their separation would disappear, their interests would be identified, and their union cemented by new and indissoluble ties.

It is worthy of remark that none of the distinguished founders of American liberty stopped to calculate the question of revenue when they recommended this enlightened policy, designed to increase the prosperity and cement the union of the states. The distinction between internal improvements and measures of public defence, upon the ground that the former can not as rightfully be carried on with the revenues of the state, or with the use of its credit as the latter, is a refinement of modern times. The statesmen of the Revolution evidently regarded free intercommunication as one of the means of national defence. Had it been then understood, as is now asserted, that internal improvement is a departure from the legitimate power of government, the opposition of the British king to emigration, and his raising the conditions of new appropriations of lands, would have found no reprobation in the Declaration of Independence, and the improvement of roads and rivers at the public expense would not subsequently have obtained an equal place with the promotion of education in the executive recommendations of Washington and Jefferson. No such absurdity was then conceived as the proposition that while a nation may employ its revenues and credit in carrying on war, in suppressing sedition, and in punishing crime, it can not employ the same means to avert the calamities of war, provide for the public security, prevent sedition, improve the public morals, and increase the general happiness.

All the questions now raised were deliberately and decisively settled in the adoption of the policy of internal improvement by this state in 1817. The estimated cost of the Erie and Champlain canals was six millions of dollars, and the whole sum was required to be expended within seven years. The revenues of the state were at that time inadequate to defray the ordinary expenses of the government without a resort to direct taxation. In this emergency the only question raised, was upon the ability of the state, not upon its right to employ its credit. Unconscious of their resources, the people of this state alternately appealed to the federal government for its all-sufficient aid, and tendered to other states a munificent participation in the fruits, as an inducement

to them to share the risks of the enterprise. Notwithstanding the failure of both appeals, no opponent was encouraged to inculcate, as is now profanely held forth, that the attempt to overcome the physical barriers to intercourse between the different regions of the state was an encroachment upon the Divine prerogative. It was resolved, on the contrary, that whether the great enterprise was regarded with a view to commerce and finance, or on the more extensive scale of policy, it would evince a want of wisdom and almost of piety not to employ for public advantage those means which Providence had placed so completely within their power. They looked into futurity and attentively listened for the warning which it might send forth, but far from hearing, as is now insanely imagined, the cries and curses of unborn millions, and the maledictions of their own descendants, they were cheered on by voices which assured them that their young and enterprising state would soon be without a rival, that the commerce of half the world would be hers, that posterity would bless for ever those who should commence and prosecute the great enterprise to its consummation, and that contemporaries would vindicate its chief defender against the assaults of his enemies. It was then asserted, as dogmatically as it is now, that taxation and ruin would be the consequences of internal improvement, and estimates of revenue, the correctness of which time has already triumphantly vindicated, were denounced as visionary and chimerical. Phantoms of debt were then, as now, conjured up to an aggregate of boundless millions, and ingeniously apportioned among the citizens, as such debts now are, by imaginary assessments according to the latest census of the state. Notwithstanding all these discouragements, the work was undertaken, stocks were issued redeemable by a subsequent generation, and revenues then existing, revenues created for the purpose, and revenues anticipated from the works to be constructed, were all devoted to the payment of the interest and the extinguishment of the debt. In 1821, the people, by their representatives, assembled to revise their Constitution. The canals were still unfinished, and their results uncertain. Yet no such absurdity was proclaimed as that of excluding internal improvement from the subjects of legislative action, nor was the dishonest suggestion of repudiating the public debt for a moment entertained. On the contrary, all that had been done was approved, and the convention, with integrity

characteristic of a just, generous, and enlightened people, incorporated into the constitution the pledges which had been given by the legislature to the public creditor, and made them thenceforth and for ever a part of the organic law of the state. These pledges have been sacredly preserved. Ample funds, received from the revenues originally devoted to the enterprise, have accumulated and been set apart for the payment of the debt, although the day for final payment has not yet arrived, and those funds now await the public creditor, a rebuke to terrorists who predicted eternal taxation.

The construction of such works by associations incorporated by the legislature is denounced as no less unconstitutional and dangerous than their prosecution by the state; and a stranger to our institutions would suppose, from the violence with which all such associations are assailed, that they have obtained innovation upon well-settled principles of government. The opponents of internal improvement object to its prosecution by the general government, by the state governments, or by corporations, and they would leave it to be carried on only by individual enterprise and with private capital. It is manifest that inasmuch as there are no private fortunes among us adequate to such enterprises, the exclusion of legislative action and that of corporations would be equivalent to an absolute prohibition of the system. Such associations had their origin in the necessities of a scanty population, dispersed over a broad territory, requiring extensive improvements, and yet enjoying wealth, limited indeed, but distributed with great equality. They are founded upon that principle of social labor which always obtains in the settlement of new countries. Since it is always their design to invite emigration and stimulate business rather than to provide comforts or facilities for a population already dense, their works are not unfrequently profitless. They are to be considered rather as agents in equalizing and rendering available the contributions of individuals for the public benefit than as monopolies of wealth. The same principle and form of association are adopted in every other department. Our manufactures are carried on by similar agencies, and our colleges, our public charities, and even our religious societies, are corporations. Their agency has always been employed in constructing works not deemed of sufficient importance to warrant their assumption by the state, and yet of too great magnitude

to be constructed by individuals. When the necessities of the country were greatest, their agency was most freely employed, and was encouraged by the most liberal charters. As those necessities diminish, they are properly regarded with greater jealousy, and the powers and privileges conferred upon them are more carefully restricted. Those who unite in such associations under the sanction of law for purposes of public improvement, necessarily incur the censure of others who, happily, excuse themselves from every contribution or sacrifice for the public welfare, upon the ground of their objections to the prevailing forms in which such contributions and sacrifices are made. But such associates may offer in extenuation of their error, that the sublime repose of the father of his country was occupied with plans of internal improvement which were to be carried out by means of similar agencies, and that even he did not deem it derogatory to his fame or patriotism to be the president of a canal company, after having worn the highest honors of the republic.

The policy of loaning the credit of the state to such associations is condemned with unmeasured severity, and you will be required from some quarters to repeal all the laws by which such loans have been authorized. This policy had its origin in 1827, and was thus explained and defended in 1829 by the distinguished citizen who then filled the executive chair of this state, and who now administers the government of the United States.* In his annual message to the legislature he observed, "It will doubtlessly be attentively considered how far the public burdens arising from the construction of works of internal improvement may be relieved, and the efforts of the state judiciously aided by the encouragement of individual associations for the same purpose. The leading case in which this policy has of late years been adopted, was that of the Delaware and Hudson Canal Company. It gives me sincere pleasure to be able to inform you that it has, in this instance, been crowned with the most cheering success. The cost of this canal is said to have been one million eight hundred and seventy-five thousand dollars, and of that sum five hundred thousand dollars have been obtained upon the credit of the state, which holds, for its security the first lien upon the canal. There is no reason to apprehend the slightest loss or inconvenience from the measure adopted to assist the company.

* Martin Van Buren.

How far you can, consistently with other claims upon your favor, extend the relief they ask, will, I am confident, receive an impartial and just examination and decision at your hands." An additional loan of the credit of the state to the Delaware and Hudson Canal Company to the amount of three hundred thousand dollars followed this recommendation. The policy has been further carried out by loans to railroad companies. Capital to an amount equal to the sums for which the credit of the state is pledged has been received from Europe. Upon the inducement held out by the legislature, it has been paid to citizens of this state, and expended by them in the construction of works of internal improvement with a view to the profit of our citizens, and the improvement and advancement of portions of the country which have not participated equally with other regions in the benefits of works constructed by the state. I will not stop to present the ruinous effects which a repeal of the laws in question at this crisis would visit upon the prosperity of the state. If to maintain the public faith inviolate it were necessary to argue from the inconveniences which would result from its violation, that faith would not be worth defending. The people of the state are intelligent and enlightened; their legislature is elected by their free and universal suffrage; they understand fully the measures discussed in the capitol; and their constitution secures accountability by bringing their representatives in every department of the government before them at short and stated periods. It is among the happy results of American constitutions, that the people have proved themselves more watchful in the guardianship of the public treasury, more enlightened in the selection of objects of public munificence, and more scrupulous in the discharge of national obligations, than those who have administered any other form of government. It is not from such a people that a violation of the public faith is to be apprehended. The proposition to repeal these laws, if made at any other time, would have passed unnoticed; but when presented at a crisis like the present, it seems to proceed from a perverseness of moral sentiment, the very recklessness of which is ordained by a wise Providence as the most effectual security against evil designs.

Within the period of twenty-three years which has elapsed since the adoption of the policy of internal improvement, the following works have been completed and are now in successful

operation. The Erie canal, connecting the Hudson river, at Troy and Albany, with Lake Erie at Buffalo, 371 miles long; the Champlain canal, connecting the same noble river, at the same points, with Lake Champlain at Whitehall, 79 miles; the Oswego canal, connecting the Erie canal at Syracuse with Lake Ontario at Oswego, 38 miles; the Cayuga and Seneca canal, opening a navigation from the lakes thus named to the Erie canal at Montezuma, 23 miles; the Delaware and Hudson canal, from Rondout on the Hudson to the Delaware river, 81 miles, and continued by railroad to the coal-beds of Pennsylvania; the Crooked-Lake canal, connecting the Crooked lake with the Seneca lake, and thus with the Erie canal, 8 miles; the Chemung canal. connecting the Chemung river at Elmira with the Seneca lake, and thus with the Erie canal, 23 miles, with an extension to Corning, 16 miles; the Chenango canal, connecting the Susquehannah river at Binghamton with the Erie canal at Utica, 97 miles; a continuous line of railroad from Albany to Auburn, 170 miles; a similar line from Lockport to Lewiston and Buffalo, 47 miles; a railroad from Rochester to Batavia, 35 miles; a railroad from Schenectady to Saratoga springs, 21 miles; a railroad from Troy to Ballston Spa, 25 miles; a railroad from New York to Harlem, 8 miles; a railroad from Brooklyn to Hicksville, on Long Island, 27 miles; a railroad from the termination of the west branch of the Chemung canal to the Tioga railroad in Pennsylvania, 14 miles; a railroad crossing the ridge between the Susquehannah at Owego and the Cayuga lake at Ithaca, 29 miles; and a railroad from the line of Massachusetts, at West Stockbridge, to the city of Hudson, 30 miles. These works constitute the internal improvements which have been made in this state, exclusive of turnpikes. Macadam and common roads. They collectively exhibit 736 miles of canals, and 406 miles of railroads. All the canals, except the Delaware and Hudson, were constructed by the state; and all the railroads, together with the Delaware and Hudson canal, were built by incorporated associations. From the various acts by which their construction was directed or authorized, the following principles may be deduced as settled in the policy of the state. That it is not only the right, but the bounden duty of the legislature to adopt measures for overcoming physical obstructions to trade and commerce in this state, and for furnishing to each region, as far as reasonably prac-

ticable, facilities of access to the great commercial emporium of the Union, fortunately located within our own borders; that whatever contributes to increase the prosperity of the city of New York is beneficial to every part of the state; that it is of paramount importance to provide such channels and thoroughfares as will render tributary the trade of other states, and especially that of the territory bordering on the shores of the great western lakes; that it is just and wise to equalize the advantages of internal improvement by the construction of auxiliary or lateral works, as far as the physical formation of the country and a judicious use of the public funds will permit; that the legislature may direct the construction of such works at the expense of the state, or authorize their construction by associations, and may aid them by loans of the credit of the state upon conditions of perfect indemnity; that taxation for purposes of internal improvement must necessarily be unequal, and would become oppressive; that the system can be carried on to the full extent of the exigencies of the state with a judicious use of the revenues to be derived from the public works themselves; and that it must at no time be so far extended as to hazard the necessity of taxation to pay the interest or principal of the debt created for that purpose.

Let us next inquire what have been the financial results of this policy, so far as it has been carried in the construction of works already completed. The cost of all the completed public works has been $12,072,032 25, which sum was borrowed chiefly at five per cent. Of this amount, excluding the Erie and Champlain canal debt, for the payment of which a fund has accumulated and has been set apart, there remains unpaid the sum of $3,476,839 66, which is not yet due. The surplus revenue from the canals during the last year was $1,057,802 74. This revenue is sufficient to pay the balance of the debt for their construction, with interest thereon, in less than four years, and is equal annually to almost nine per cent. upon the entire cost of all the canals. It is surely not unworthy of consideration, that these results have been attained with the use of capital which otherwise would not have reached our shores. Nor ought it to be forgotten that the policy has also called into action associated capital to the amount of about nine millions of dollars, which has been expended in the construction of public improvements, by which the value of agricultural productions has been sustained, labor encouraged, indus-

try stimulated in all its departments, and new facilities of communication have been opened in various parts of the state.

But how unimportant is the increase of the revenues of the government compared with the more extensive commercial, agricultural, and political results, affecting the social condition of the people of this state. The navigable waters of the state, open to direct commerce with the city of New York in 1817, scarcely exceeded three hundred miles in length. It is less than forty years since Quebec was generally regarded as the destined mart of the northern regions of this state, and Baltimore and New Orleans confidently anticipated the trade of our southwestern frontier. The commerce of the state has now its wharves on the shores of her lakes, rivers, and bays, along an extent of twelve hundred miles, to which must be added four hundred miles of canals in other states, and three thousand miles of lake coast, accessible through our artificial channels. By means of these improvements, the advantages of navigable communication with the city of New York have been distributed over a territory of twenty-five thousand square miles, equal to one half of the surface of the state, and already sustaining more than one half of its population. Their effect in equalizing the local advantages of the different portions of the state, is proved by the facts that the average population, per square mile, of the regions thus opened to commercial intercourse is forty-eight, while that of the regions not thus accommodated is only seven. Buffalo and Oswego, Binghamton and Elmira, which nature seemed to have excluded from commerce with New York, now enjoy greater facilities of access than Utica did before the canals were made; and Chicago, a thousand miles distant, exchanges her productions for the merchandise of the same city, at less expense and with less delay than Oswego could have done at the same period. The wheat of Chautauque county, on the border of the state, displaces that staple on the shores of the Hudson; and Orange and Dutchess cheerfully relinquish its culture for the more profitable agriculture required to furnish the daily supplies of a great city. Lumber from Tompkins and Chemung, and ship-timber from Grand Island, supply the wants of the city of New York. Iron from the banks of the Au Sable is exchanged for the salt of Onondaga. The gypsum of Madison and Cayuga fertilizes the fields of Pennsylvania, and the coal of that state is moving to supply the place

of the forests of the west. Railroads have immeasurably increased the facilities of intercourse, and expedited the transmission of intelligence. Political influence and power are distributed among the cultivators of the earth; and our state, from an inferior position, has risen rapidly to unquestioned ascendency in the Union. The clouds which so often rise over the commercial cities of Europe, can not cast a permanent gloom over the prosperity of a state which, according to the sentiment of Jefferson, has wisely secured herself by the improvement of roads, canals, rivers, education, and the other great foundations of national prosperity and union. A people thus enriched will not abandon the system to which they owe their wealth, because the agents by whom it has been conducted may have erred, or may even have been unfaithful; nor will they be stopped in their career by obstacles which time must diminish and enterprise will overcome. The prudence, moderation, and economy, which are now recommended will only reinvigorate our energies, and confirm our ability to prosecute this system until every part of the state shall enjoy its inestimable advantages. The pressure which has fallen upon the country can not long continue. No commercial fluctuations here or abroad can permanently repress the enterprise of the people, or check the progress of the state in wealth and population. Our canal revenues improve even under the most adverse circumstances; and although they may be stinted in their increase for one year, or for two years, they will soon regain their progressive force.

Unlike other communities, this state borrows no money for purposes of war or defence, or to pay salaries or pensions, or the interest or principal of former loans, or even to endow institutions of learning, benevolence, or religion. Her income is sufficient for her wants, without taxation; the value of her productive property is double the debt she owes; her surplus income is double the interest she is required to pay; and the revenues derived from her canals, if judiciously managed, will be adequate to every enterprise which the interests of the people shall demand.*

The rapidity with which the system of internal improvements shall be prosecuted, and consequently the period at which its full

* The legislature responded to this plan for internal improvements by liberal appropriations, authorizing, among other things, a loan, and subsequently an absolute gift, of three millions of dollars, to the New York and Erie railroad.—*Ed.*

advantages shall be realized, depend not altogether upon the legislature. The federal government holds in trust for the states almost a thousand millions of acres of land, the value of which, at the lowest government price, is one dollar and twenty-five cents per acre. This immense domain, the property of the states, was ceded by them to the general government, as their trustee, for their common interest and benefit. In 1790, Congress very properly pledged the avails of the public lands for the payment of the national debt. That debt has been discharged. The revenues which the federal government derives from imposts should be sufficient for all its expenses, and that government has no legitimate right to use the proceeds of the public lands. It neither constructs works of internal improvement, nor establishes systems of education. The state governments are charged with these responsibilities, and with the regulation of their own municipal affairs. The sum which has been received into the federa. treasury from the sales of lands exceeds fifty millions of dollars. A bill passed both houses of Congress, making a distribution of these proceeds, but was lost for want of the Executive approval. The proportion of these avails which equitably belongs to this state, would relieve her from the necessity of delaying or postponing the prosecution of any one of the public works already undertaken, and would enable her to assume others in which her citizens have engaged. Her interest in the immense domain remaining unsold is a resource which would enable her to extend her improvements, until no dwelling within her borders would be distant more than fifteen miles from means of rapid communication.

New York need not solicit the federal government, as is proposed in some quarters, to assume or guaranty the payment of the debts of the several states, upon a pledge of the public lands. Her credit needs no such extraneous support, and her enterprise might be crippled by the national guaranty of the credit of other states, upon whose legislation she could have no check. Her interest is the common interest of all the states. Her prosperity is indissolubly connected with theirs. Her works of internal improvement, magnificent as they may be, will, nevertheless, only constitute a part of that great system which the enlightened mind of Washington foresaw would open channels to the Atlanic coast for the productions of the west, and bind the states in

indissoluble bonds of affection and interest. Her prosperity is increased by all that advances that of any of her sister-states, and she suffers, soon and severely, every calamity that falls upon them. She learns with surprise, from the annual message of the president of the United States, that although the federal government has unlimited possession of the imposts upon foreign commerce, and derives fifteen millions annually from the city of New York alone, its revenues from that source are deemed insufficient for its ordinary expenditures. She hears with astonishment the suggestions made by the president, in violation of every principle of enlightened economy, of magnanimous policy, and of the well-established and often-recognised conditions of the trust, to consume the revenues arising from the sale of the public domain for the ordinary purposes of government, and thus prodigally waste, in temporary and often needless and extravagant expenditures, the richest inheritance that Providence ever bestowed upon any people. The canals of the state have opened the way for emigration to that domain, have furnished facilities for the transportation of its productions, have immeasurably enhanced its value, and thus have greatly contributed to increase the revenues which it has poured into the national treasury. She may, therefore, with peculiar justice, demand a division of those revenues, and a partition of the national domain. The wants of many of the states will induce a more favorable consideration of a policy so eminently enlightened, just, and equal; and it can not be reasonably doubted that the voice of the people of this state, if clearly expressed in its favor, would meet with a response from every part of the Union. It is demanded not only upon the grounds of justice and financial expediency, but by considerations deeply affecting the public liberty and the maintenance of our institutions, since the possession of this domain, and the control of the large revenue derived from it, can not fail to increase the preponderance of the federal government, and diminish the just and necessary power and sovereignty of the states.

The cursory view which has been taken of the condition of the state, and of the measures requiring your consideration, was perhaps unnecessary to produce a conviction that you have been called to your high trusts at a period when you will be embarrassed by extraordinary difficulties, and when your discharge of those trusts will be regarded with great solicitude. It is not a

time to aggravate existing evils by sudden and violent changes of policy, or by bold experiments, or by rash innovations. The immediate welfare of the people and their permanent prosperity will be better promoted by a steady adherence to the settled policy of the state, with economy and retrenchment in its prosecution, and by the preservation of institutions intimately connected with that policy, and with the various individual interests of our fellow-citizens. Nor ought we to forget that the counsels of government are ineffectual to promote the common welfare, if they are not guided by that sense of dependence upon Divine favor, which the remembrance of past blessings is so well calculated to inspire.

ANNUAL MESSAGE TO THE LEGISLATURE,

JANUARY 5, 1841.

FELLOW-CITIZENS OF THE SENATE AND ASSEMBLY:

THE field of public service to which you have been called is bounded by no narrow limits. It includes the responsibilities of securing civil rights; of defining crimes of every grade, and prescribing their appropriate punishments; of establishing laws concerning the acquisition, tenure, and alienation, of property; of instituting and maintaining courts of justice; of prescribing and enforcing all duties arising out of the domestic and social relations; of organizing associations designed to promote the public good, and of controlling or suppressing such as are injurious; of taking care of the public health; of providing a medium of exchange, and sustaining domestic trade; of regulating elections, and preserving the purity of the elective franchise; of enacting laws for the discipline and instruction of the militia, the education of youth, the support of the poor, the relief of the afflicted, the encouragement of agriculture and all useful arts, and the development of the resources of the state by the improvement of rivers and the construction of roads and canals; and finally all the responsibilities and powers which sovereign states may assume and exercise, with the exception only of those expressly granted to the federal government, and subject only to the limitations prescribed by the constitution of this state and that of the United States. These responsibilities affect the welfare, honor, and happiness, of two and a half millions of free people. Although distinguished for the refinement of its social condition,

NOTE.—During the preceding year Mr. Seward had been re-elected governor, and General Harrison had been elected president. The governor alludes to the latter fact, in this message, in appropriate terms. The subject of internal improvements again occupies a large share of the message, and is discussed in the same able and comprehensive manner as in his previous messages.—*Ed.*

this community is only in the beginning of its existence. Notwithstanding its thousand towns, it has yet an extensive region altogether unoccupied; and with an aggregate wealth of a thousand millions of dollars, its soil is imperfectly cultivated, its minerals have hardly been disturbed in their beds, the natural obstacles to trade have been only partially removed, and the perfect subdivision of industry in its various departments is yet to take place. We are in the midst of communities which are neither hostile nor rival powers, nor yet dependent colonies, exhausting our wealth for their support; but free and prosperous states, bound to us not only by the federal compact, but by the stronger ties of common sympathies and affection, and obliged by the natural direction of their trade to contribute to our revenues and increase our commercial importance.

When the federal government has discharged its duty in maintaining peaceful and advantageous relations with foreign countries, in conducting its fiscal affairs so as not to derange the business of the people, in making the necessary improvement of navigable rivers and lakes, and in affording proper facilities for the transmission of intelligence, it can do little more to promote the public welfare. On the other hand, the state legislature, which, by salutary reform, effects a decrease of crime, raises the standard of general education, establishes a new safeguard around the elective franchise, or opens a new channel for commerce, does more to increase the general prosperity, and even to strengthen the bonds of the Union, than Congress with its limited powers can often accomplish.

The year which we are permitted to review has been crowned with the blessings of health, plenty, and peace. No pestilence has been abroad, severing the ties from which happiness arises, and recompensing with disease and death the unavailing offices of affection; nor has war, with its fearful desolation, diverted from domestic sorrows their rightful sympathy and consolation. Contentment has been in our dwellings; and the abundance we have received has rendered it more easy to give than to withhold. The laws have maintained their supremacy; and the administration of justice has encountered no resistance. All the departments of the government have performed their functions without interruption, and with general success. The harvest has been followed by a partial resuscitation of confidence, and general indi-

cations of a revival of enterprise promise a return of prosperity. Sentiments favorable to frugal and patient industry have regained their just influence; and the agitation which, for a time, threatened to array against each other masses having common interests, and to establish new, impracticable, and revolutionary measures, in the policy of the government, has given way to a prevailing conviction that the public welfare is best promoted by mutual harmony and confidence, and by a conservative support of tried institutions and laws.

The amount of tolls and rents of surplus waters collected during the last fiscal year, on all the canals of the state, was	$1,606,827 45
And the amount of charges on all the canals, exclusive of interest on loans, was	586,011 87
Leaving a net revenue of	$1,020,815 58

Being $36,981 17 less than the amount of net income of the preceding year.

All the colleges in the state are in a flourishing condition. The number of students attending these institutions is six hundred and sixty-two; of whom one hundred and twenty are in Columbia College, one hundred and fifteen in the University of the City of New York, two hundred and seventy-three in Union College, ninety-four in Hamilton College, and sixty in the college at Geneva. The communication from the president of Columbia College, herewith submitted, shows that that institution is suffering a singular inconvenience, resulting from some erroneous restraints connected with the past liberality of the state.

The number of students in all the academies and grammar-schools in the state is thirty-six thousand, eight hundred and three. The number of children attending the common schools is about five hundred and seventy thousand; and the whole number of children between five and sixteen years of age, as nearly as can be ascertained, is about six hundred thousand. There are about eleven thousand common-school districts in the state, including those under the charge of the Public School Society in the city of New York, in all of which schools are maintained during an average period of eight months in the year. Of these school-districts, there are very few which have not complied with the act providing for the establishment of school-district libraries, and there are at this time in these various district libraries about one million of volumes. Within the five years limited by the law, there will have been expended in the purchase of books more

than half a million of dollars. Although an injudicious choice of books is sometimes made, these libraries generally include history and biography, voyages and travels, works on natural history and the physical sciences, treatises upon agriculture, commerce, manufactures, and the arts, and judicious selections from modern literature. Henceforth no citizen, who shall have improved the advantages offered by our common schools and the district libraries, will be without some scientific knowledge of the earth, its physical condition and its phenomena, the animals that inhabit it, the vegetables that clothe it with verdure, and the minerals under its surface, the physiology and the intellectual powers of man, the laws of mechanics and their practical uses, those of chemistry and their application to the arts, the principles of moral and political economy, the history of nations, and especially that of our own country; the progress and triumph of the democratic principle in the governments on this continent, and the prospects of its ascendency throughout the world; the trials and faith, valor and constancy of our ancestors; with the inspiring examples of benevolence, virtue, and patriotism, exhibited in the lives of the benefactors of mankind. The fruits of this enlightened and beneficent enterprise are chiefly to be gathered by our successors. But the present generation will not be altogether unrewarded. Although many of our citizens may pass the district library, heedless of the treasures it contains, the unpretending volumes will find their way to the fireside, diffusing knowledge, increasing domestic happiness, and promoting public virtue.

The institution for the instruction of deaf mutes and the asylum for the blind continue to make ample returns for the patronage they have received.

The legislature of 1839 very properly directed the immediate attention of the commissioners of the asylum for the insane to the completion of one of the four edifices contemplated by my predecessor. The building is designed to accommodate about two hundred and fifty persons, and can be prepared during the ensuing season for the reception of those who unhappily are to become its tenants. It devolves upon you to adopt a system for the government of the institution. There is not within the range of the healing art a department that requires so rare a combination of profound knowledge of the physical and intellectual con-

stitution of man, with firmness, gentleness, and devotedness, as that of the cure of diseased minds.

The geological examination of the state will be completed on the first day of June next. The public offices of the several state departments will be transferred during the spring to the new state-hall; and the building now occupied by those offices will, in pursuance of the law passed at the last session of the legislature, be fitted for the reception of the geological, botanical, mineral, and zoological specimens procured during the survey. The final report of the geologists will be submitted at the next session of the legislature; and inasmuch as it will exhibit a full view of the zoology, botany, mineralogy, and geology, of the state of New York, it will be a nobler tribute to science than any which has yet been offered in our country.

The law passed last year concerning the redemption of bank-notes has had a beneficial operation. The currency issued by the several banking institutions and associations has maintained its credit and circulation. The bills of the City Bank of Buffalo have been redeemed by applying for that purpose $262,333 83 of the safety-fund and $52,795 17 received from the contributing banks. The Wayne County Bank at Palmyra has recently been placed under an injunction at the instance of the bank commissioners; but the holders of its bills will sustain no loss. There remains of the capital of the safety-fund the sum of $556,486 76.

The number of convicts in the stateprison at Auburn on the thirtieth day of September last was six hundred and sixty-seven; of whom two hundred and fifteen were received during the year ending with that day. In the same period twelve died, thirty-five were discharged by pardon, and one hundred and fifty-four by expiration of their sentences. The amount received for the labor of the convicts during the fiscal year was $61,355 35; and the amount expended for general support and necessary improvements, and in the payment of previous debts, was $57,928 10. The excess of the earnings of the convicts over the ordinary expenses of the prison was $6,917 39. The number of convicts in the stateprison at Mount Pleasant at the close of the fiscal year was eight hundred and thirty-two. The number received during the year was three hundred and fifty-six; sixteen died, twenty were discharged by pardon, and one hundred and ninety-two by

expiration of sentence, within the same period. The amount of earnings was $83,504 14, and the expenses of the prison were $77,460 00. The fiscal condition of the prisons is highly satisfactory, and their discipline has been improved. The complaints of cruelty which heretofore engaged public sympathy, and brought our penitentiary system into disrepute, have altogether ceased. Sunday-schools have been maintained; and, in pursuance of my recommendation, the cell of each prisoner is always supplied with a volume of the school-district library. This measure was followed by a gratifying improvement in the conduct of the prisoners. Many wearisome hours of solitary confinement are beguiled, resolutions of repentance and reformation are formed, and the minds of the unhappy convicts, accustomed to the contemplation of virtue, and expanded by knowledge, are gradually prepared to resist the temptations which await them on their return to society.

The efficacy of the administration of justice must necessarily be impaired by a too-frequent exercise of the pardoning power. Inconsiderate clemency operates as an encouragement to crime, and produces more misery than it alleviates. I have deemed it my duty to restrict the exercise of the pardoning power, within narrower limits than have been heretofore observed. It has been confined to those cases where the conviction was erroneous; where the punishment adjudged was manifestly too severe; where important disclosures conducive to public justice were made; where the insanity of the prisoner showed that a higher than any human power had interposed between society and the offender against its laws; where diseases threatening life might be removed by a restoration to liberty; and a small number in which the appeal for mercy was commended by the sex, the tender youth or extreme age of the prisoner, or by the temptations which prompted, or the mitigating circumstances which attended, the commission of crime, and was supported by evidences of penitence and reformation. The whole number of persons discharged from the stateprisons by pardon, during the last year, was fifty-four. The number pardoned in 1839 was thirty-three. Of those pardoned in the two years, the rights of citizenship were restored to those only, six in number, who were found to have been unjustly convicted.

The whole number of persons pardoned for every description

of offence, including misdemeanors, in 1820, was three hundred and fifty-four; in 1821, three hundred and eleven; in 1822, two hundred and nine; in 1823, one hundred; in 1824, one hundred and eighty; in 1825, one hundred and seventy-three; in 1826, two hundred and eighty-five; in 1827, one hundred and ninety; in 1828, two hundred and thirty-one; in 1829, eighty-eight; in 1830, one hundred and thirty-eight; in 1831, one hundred and fifteen; in 1832, one hundred and seven; in 1833, one hundred and sixty; in 1834, one hundred and forty-nine; in 1835, one hundred and thirty-one; in 1836, ninety-three; in 1837, one hundred and eight; in 1838, one hundred and fifty-eight; in 1839, sixty-four; and in 1840, eighty-five. Sixteen convictions for murder have been reported to me within the last two years. Of these, one conviction was reversed by the court for the correction of errors; one convict was pardoned because, although he pleaded guilty to the charge, it was certified by the court that he was insane when the crime was committed; the sentences of three were commuted to confinement in the stateprison for life, upon the ground of doubts of the justice of their conviction, or of mitigating circumstances; nine have suffered the penalty prescribed by law; and two are now awaiting the same fearful punishment. While many citizens deny the absolute right of government to inflict capital punishment, all agree that its too great frequency operates as an encouragement rather than a preventive of crime. It is an interesting and important inquiry whether that frequency does not now exist among us.*

The canals were navigable from the twentieth of April until the fourth of December; and the navigation has been less hindered than in any previous year. An increased depth of water has been maintained, permitting greater burden in the boats used, and materially reducing the expense of transportation. Thirty thousand dollars were expended in repairing the dam across the Hudson river at Troy, which was carried away by a flood in February last. It was also found necessary to substitute new structures for several decayed locks and aqueducts, in order to maintain the navigation of the Erie and Champlain ca-

* During this session of the legislature, a bill abolishing capital punishment entirely was unanimously reported to the assembly by a committee of five, of which Hon. J. L. O'Sullivan was chairman. The bill was lost by a vote of 47 to 52. For report of committee, vide Assembly Documents, 1841, April 14.—*Ed.*

nals. The expenditures for repairs have thus been somewhat increased.

The enlargement of the Erie canal has been prosecuted with all the diligence permitted by the appropriations for that object. Various portions of the work have been finished, and others will be completed during the winter. The amount expended for the enlargement, prior to the 1st of January, 1840, was $4,669,661. The appropriations for that object during the last year were $2,500,000; and the surplus revenues of the canals applied to the same purpose were $369,171. Thus, between the first day of January, 1840, and the first day of March next, the sum of $2,869,171 will have been expended, making the aggregate sum which will then have been applied to this great work, $7,538,832. The experience of the present commissioners justifies the belief that the cost of the enlargement will not exceed the corrected estimate submitted by their predecessors in 1839, viz., $23,112,766. Deducting the amount which will have been expended on the first of March next ($7,538,832), there will be required to finish the enlargement the sum of $15,573,934. That portion lying between Albany and Rome might be completed in the spring of 1843; the part extending from Rome to Rochester might be finished by the spring of 1845; and the residue, from Rochester to Buffalo, by the spring of 1847.

The legislature, at its last session, appropriated $100,000 for rebuilding the locks on the Chemung canal. The work has been commenced, and will be efficiently prosecuted. Fourteen of the new locks will be ready for use when the navigation is resumed.

A section of the feeder of this canal, one mile in length, was left in an unfinished state, and the navigation has been much hindered. The inconvenience has been felt more severely since the business of the canal has been increased by the transportation of coal.

The construction of the Black River canal has been continued. The portion of it from the Black river to Rome, about thirty miles in length, required as a feeder, may and ought to be completed as soon as an additional supply of water shall be required for the enlarged Erie canal. According to the corrected estimate of the former canal commissioners, the cost of the Black River canal and feeder will be $2,431,699 29. There was appropriated in 1836 the sum of $800,000, and in 1840 the sum of $250,000, to which

is to be added the expense of a feeder from the Black river to the Erie canal, estimated by the canal board at $290,097 66, which has been transferred to the credit of the Black River canal, making an aggregate of $1,340,097 66; all of which, except about $160,000, had, at the close of the fiscal year, been devoted to the construction of that work.

That part of the Genesee Valley canal lying between Rochester and Mount Morris, thirty-six miles in length, was opened for navigation on the first of September last. The branch canal to Dansville will be finished and connected with the main canal during the present winter. The cost of the entire improvement was estimated by the former canal commissioners at 4,900,122 79. The sum of $2,000,000 was appropriated in 1836, and $500,000 in 1840, the whole of which will have been expended by the first of March next.

Forty-five miles of the New York and Erie railroad, extending from its eastern termination at Piermont on the Hudson river to Goshen, in the county of Orange, will be brought into operation within the present month. The entire length of the road will be four hundred and forty-six miles. Various portions, seventy-two miles in the whole, are graded, and ready to receive the superstructure. Ninety-one miles, chiefly in the valley of the Susquehannah, are under contract, and the company represent that they are about closing contracts for one hundred and eighty-eight miles. They represent further that their road will, in its capacity for business, and the cheapness and safety with which it can be used, be second to none in the United States, and, with the exception of its higher grades, equal to any in England. The company also communicate their expectation of completing the work within the period of two years. The cost of the road, as estimated by the company, will be about nine millions of dollars. The amount which has been expended is one million, three hundred and fifty thousand dollars. The credit of the state was granted, by the law of 1838, to the extent of three millions of dollars, of which four hundred thousand dollars were issued prior to 1840, and four hundred thousand dollars within that year.

The construction of the Auburn and Rochester railroad has been successfully prosecuted. That portion of the road which extends from Canandaigua to Rochester, and connects with the railroad from the latter place to Batavia, was put into operation

on the first of September last. It is expected that the whole will be finished within the ensuing eighteen months, and there will then be a continuous line of railroad from Albany to Batavia, leaving a space of only forty miles without such communication between the Hudson river and Lake Erie.

The commissioners appointed to survey the routes for a railroad from Ogdensburgh to Lake Champlain, have performed that duty. I lay before you their report concerning the feasibility and advantages of an improvement which I deem essential to the development of the mineral resources of the state, and to its general prosperity.

The Delaware and Hudson Canal Company, and all the railroad companies which have been aided by loans of the credit of the state, have regularly paid the interest on the stock issued for their benefit.

The debt of the state, exclusive of that portion which was contracted for the construction of the Erie and Champlain canals, and which is regarded as paid by the accumulation of funds set apart for that purpose, and exclusive also of the contingent liabilities arising from the loans of its credit, is as follows:—

Debt of the general fund, exclusive of what is called the permanent loan to the treasury from the canal revenues	$1,412,961 62
Debts for the lateral canals that are completed, including the recent loan for the Chemung canal	3,551,784 71
Debts contracted for unfinished works, viz.:	
For the enlargement of the Erie canal	6,500,000 00
For the Black River canal	1,050,000 00
For the Genesee Valley canal	2,500,000 00
For the Oneida river improvement	50,000 00
Aggregate state debt	$15,064,746 33

The net revenues of all the canals during the fiscal year, after deducting all expenditures and the deficiencies of the lateral canals, were	$1,020,815 57
Leaving a clear surplus, after paying the interest on the debt for the enlargement of the Erie canal, and the $400,000 annually loaned to the treasury, of	398,095 95
The commissioners of the canal fund estimate that the clear surplus of the current fiscal year will be	570,000 00
The expenditures from the general fund, during the fiscal year, exclusive of the deficiencies of the lateral canals, were	$779,324 36
The receipts from the sources provided by law were	379,211 01
From the payment of the balance due the preceding year from the canal fund and from other sources	400,113 35

The militia of the state consists of forty-three divisions, of which four are artillery, three are cavalry and horse-artillery, thirty-three are infantry, and three are riflemen. These are divided into three

hundred and sixty-nine regiments and separate battalions. The aggregate number of citizens enrolled is one hundred and eighty-three thousand, one hundred; and three thousand, three hundred and eighty-two are enrolled in independent uniform companies. While I have the pleasure to announce a gratifying improvement in the enrolment of the militia, it will excite no surprise that its discipline remains as imperfect as heretofore.

The report of the commissary-general presents an account of the condition of his department. The state owns two hundred and ninety-two iron and two hundred and fifty-five brass pieces of ordnance, with arms and imperfect equipments for a force of about fifty thousand men. Your attention is respectfully called to the suggestion of the commissary-general concerning the necessary measures for the preservation of the important property committed to his care.

The commissioners appointed to mediate a settlement of the difficulties on the manor of Rensselaerwyck, have prosecuted the duty assigned them, in a spirit of equal justice to all parties, and will, as I am informed, soon be prepared to submit a report.

I submit herewith the correspondence which has passed between the executive of Virginia and myself, on the subject of the demand made by the former for the delivery of certain fugitives from justice, charged with stealing a negro-slave.* In bringing the subject of this correspondence before your predecessors, I observed that it fell within the province of the executive department, and that the duties of that department arose under the constitution and laws of the United States, and not under the constitution or laws of this state. Nevertheless, the respect I owed to the executive of Virginia, and to the legislature of this state, induced me to submit my action for the information of the legislature. The governor of Virginia, by direction of the legislature of that state, subsequently transmitted to me certain resolutions of that body, with a request that I would lay the same before the legislature of this state. I was at the same time requested by the executive of Virginia to review the position which I had taken. Both these wishes were complied with, and with what results will appear in the correspondence now submitted. I have thought it might not be uninteresting to the legislature to receive also a

* See page 449, Vol. II.

copy of a special message by the governor of Virginia to the legislature of that state, together with a copy of a circular letter addressed by that functionary to the governors of the slaveholding states.

In discharging the constitutional duty of recommending such measures as are deemed expedient, I shall have occasion sometimes to refer to views submitted to your predecessors, and to past legislation.

It has been heretofore recommended that the legislature should insist upon the payment by the federal government of the fourth instalment of the surplus revenues, and require a relinquishment by Congress of all claims for a reimbursement of the moneys constituting the United States deposite fund. The moneys deposited with the states were derived from imposts and from sales of the public lands, and were the property of the people of the United States. It can not be denied, that when the distribution was made, it was well understood by Congress, that the form of a deposite was adopted, only to save the bill from a veto by the federal executive. Nor is it less apparent that the several legislatures, in disposing of the funds deposited, by no means contemplated a contingency in which they should be repaid to the general government. In the last message of the president, and in the report of the secretary of the treasury, this deposite is alluded to as a part of the resources of the treasury, which has lain uncalled for during a long period of fiscal embarrassments, although Congress, subsequently to the distribution, expressly prohibited the secretary from demanding the moneys without its express authority. Having observed with much pleasure, the introduction into the house of representatives of a bill which would carry into effect the views I have heretofore presented to the legislature, I again respectfully submit the inquiry, whether the people of New York expect to withdraw from the endowment and support of common schools, and other seminaries of learning, the sum of four millions of dollars thus derived, and pay it into a treasury which, when well managed, overflows with the tributes of their own commerce.

After the canals tolls, our chief sources of revenue are the duties upon auction sales, and upon the manufacture of salt at the salt springs. Previous to 1838, such sales were required to be

made by persons appointed by the governor and senate. It was justly urged against that system, that it was a monopoly injurious to trade, and that it unnecessarily increased the patronage of the executive, and it was therefore abolished. It has been thought worthy of inquiry, whether the plan now pursued is not defective in provisions for securing the payment of the duties constituting the revenue.

The salt springs furnish a supply of water ample for the production of five millions of bushels of salt annually, but the demand within the regions dependent upon them scarcely exceeds half that quantity. It has been believed that by a judicious reduction of canal tolls upon the salt manufactured from the water of those springs, the market might be extended, the manufacture increased, and consequently the revenue of the state augmented. To these suggestions, I respectfully add that of negotiation upon some equal basis with the state of Ohio, for a reduction of tolls upon our salt transported upon the canals of that state, which might be reciprocated by a reduction of our tolls upon coal and other minerals from Ohio.

It was submitted to your predecessors that the administration of justice was hindered and delayed, and rendered oppressive by reason of the defective organization of the courts of law and equity; that the court of chancery was incompetent to its important duties; that causes remained on its calendar more than two years; that its patronage and power were too great to be reposed in a single judge, that the supreme court was oppressed with business, aad could not perform it with the deliberation and despatch required by the public welfare; that courts of common pleas had in a great degree been deserted by suitors, and had the form and organization of courts of justice, while they enjoyed little of the popular respect due to such tribunals, and performed few of their important functions; and that the compensation heretofore paid to registers and clerks in chancery, and to the clerks of the supreme court, to county clerks, surrogates, notaries and supreme court commissioners for their services, to attorneys in the collection of debts, and to solicitors, councillors and masters, in the foreclosure of mortgages, was disproportioned to the services actually rendered and was unnecessarily increased by the prolixity and tediousness of legal forms and proceedings.

It was proposed to reorganize the court of chancery, and the supreme court, to restore the efficiency and usefulness of the courts of common pleas, to enlarge the jurisdiction of the justices' courts, to introduce greater simplicity and brevity into legal proceedings and to reduce the fees of the various public officers to such a scale as would afford just compensation for necessary services. Although the necessity of reorganizing the higher courts was earnestly insisted upon by my predecessor as well as by myself, and although it has engaged the attention of the legislature for several years, and has been made the subject of reference to the judiciary and to a special commission, yet such have been the difficulties attending any improvement, that it has nevertheless been left for your consideration. The only measures which have been adopted were temporary provisions directing the appointment of two vice chancellors in the first circuit, one in the eighth, and an additional judge of the court of common pleas in the city of New York. The legislature of 1839, reduced the fees and emoluments of registers and clerks in the court of chancery by a law which diminished the aggregate compensation annually paid to those officers by about the sum of thirty thousand dollars.

The legislature of 1840, entitled itself to the lasting gratitude of the people, by benign measures designed to produce a reform in legal proceedings. It dissolved the connection between judges of county courts and boards of supervisors, in the appointment of county treasurers and county superintendents of the poor, a connection by which judges were made partisans, and the power of the executive department was exercised to defeat the will of the people in the selection of those local functionaries. The office of commissioner of deeds was abolished, except in cities; its duties were devolved upon justices of the peace, while the fees allowed for those duties were diminished; and thus offices were dispensed with, in which there were about three thousand incumbents, and the burdens of the people were sensibly diminished. A law was also passed requiring all judgments designed to affect any real estate, to be docketed in the county in which such real estate should be situated. This measure has relieved the alienation of land of onerous charges, and of much inconvenience, and has removed one of the causes which diverted business from the courts of common pleas into the supreme court. The jurisdiction of justices' courts was extended, so as to include controversies where the amount in-

volved does not exceed one hundred dollars. It is gratifying to notice the progress of these domestic tribunals in the favor and confidence of the people. Their jurisdiction was originally limited to demands not exceeding five pounds, or twelve dollars and a half. By other laws, the legislature reduced the fees of many other officers, and diminished the average cost of foreclosure of mortgages to a sum two thirds less than under the former system, that of collecting debts in actions not litigated to a sum three fourths less and the costs in litigated suits to an amount one third less. While there can be no doubt that these measures were in principle just, and that the reform which has been accomplished was necessary, it is complained by many who are conversant with the practice of the courts, that some of the laws which have been passed are imperfect, liable to be evaded, and in some respects unequal in their operation. Such a result is by no means improbable. There are few of the works of man which are not susceptible of improvement; and certainly all experience has shown, that laws seldom form an exception. If the system which has been substituted in the place of one that had long prevailed, is in any material respect defective, or unjust, I doubt not that it will afford you much pleasure to make the necessary amendments.

In regard to our penitentiaries, I have urged that discipline ought to be tempered with kindness, and that moral influences should be employed to secure the submission and promote the reformation of convicts. Although some improvement has been made in this respect, more can yet be accomplished. It is too often forgotten, that the object chiefly contemplated in the adoption of our penitentiary system, was the reformation of offenders. This object derives its importance from considerations of prudence, as well as of philanthropy. The unreformed convict, after being released, spends a brief period in committing depredations upon society, and in corrupting youth, and then returns to the prison to exercise a vicious influence upon his fellow-prisoners there. Reformation can seldom be expected, without addressing the mind. I would have the school-room in the prison fitted as carefully as the solitary cell and workshop; and although attendance there can not be so frequent, I would have it quite as regular. The recent establishment of a separate institution for

female-prisoners, under the management of one of their own sex reflects much honor upon the state; and I am happy to add that it has realized the expectations of the legislature. Females convicted within the district from which criminals are received at the Auburn prison, are now sent to that penitentiary, where they remain until an executive order is made for conveying them to Mount Pleasant, and such an order can not be made for less than ten convicts. This temporary imprisonment of females in the prison at Auburn operates harshly toward them, and is inconvenient in regard to the management of that institution. I respectfully recommend that the law be modified, so that females be directly conveyed to their proper penitentiary. The chief obstacle to a reformation of this class of offenders is the inflexibility with which society rejects them after their season of penance is past. While the cause of public morals requires their exclusion, at least until they have given satisfactory evidence of reformation, humanity and expediency unite in recommending proper efforts to sustain those who are truly reformed. It has been suggested that a retreat might be provided for them at Mount Pleasant, where, under the care of benevolent females, they might maintain themselves by labor, until by good conduct they should become entitled to employment elsewhere. Such a plan must necessarily be left to private liberality; and I am informed that such liberality is awakened to the undertaking, and ready to engage in it, if a proper edifice can be obtained. A building which belongs to the state, situated near the prison, and now of very little use, might be devoted to this humane purpose, at least until the experiment could be tested.* The whole number of male convicts in the stateprisons is fourteen hundred and twenty-three, of whom eleven hundred and fifty-three are white, and two hundred and seventy are colored persons. The number of female convicts is seventy-four, of whom forty are white and thirty-four are colored. The sex has a just claim to extraordinary effort for the reformation of the small number of persons it furnishes to our prisons.

The success which has crowned the benevolent efforts of the founders of the House of Refuge has induced an opinion that it would be profitable to establish a similar institution in the west-

* The senate journals show that this is only a continuation of earlier efforts made by Governor Seward for the same object.—*Ed.*

ern part of the state, where the subjects of its discipline could be maintained at much less expense than in the city of New York.

The law which authorized the imprisonment of non-resident debtors, against whom no fraud was alleged, was repealed at the last session upon the ground that the practice operated injuriously to trade, and was inconsistent with the benign spirit of our code. There remains now only one relic of that usage in this state. Imprisonment for debt is allowed in actions brought in the federal courts; and by the laws of this state, our jails, designed only for the custody of criminals, are permitted to be used as prisons for the confinement of debtors, under process issued by the authority of the United States. If you shall be of opinion that no principle of the federal Union requires us to extend our courtesy so far, we shall no longer witness the imprisonment of honest but unfortunate debtors, with the sanction of this state.*

The legislature at its last session communicated to our representatives the opinion that Congress was imperatively required to exercise its constitutional power of passing uniform laws on the subject of bankruptcy. I beg leave to refer you to the views of that interesting subject which were submitted to your predecessors, and to suggest a renewal of instructions during the present session of Congress.

Our currency was sustained in 1839 and 1840, during a period of suspension in most other states. For this advantage we were indebted to a supervision of the banks, to the establishment of a free banking system, to the repeal of the act prohibiting the circulation of small bills, and to the law of the last legislature regulating the redemption of bank-notes. The policy found most conducive to the public welfare, has been to desist equally from increasing the number of chartered banks, and from legislation hostile to those in existence; to correct defects in the new system of free banking, and to give it a fair trial; to require of all banking institutions and associations, not only a prompt redemption of their circulating notes, but also that such notes shall be at all

* A law was passed by Congress in 1842, abolishing imprisonment in proceedings in the federal courts, in states where imprisonment was forbidden in like cases.—*Ed.*

times kept in good credit throughout the state. These views having prevailed in the legislature during the last two years, the public inconveniences which heretofore existed, have ceased; and it has happened for the first time within thirty years, that the legislature is relieved alike from applications for banking privileges, and from complaints against those by whom such privileges are held.

While the most careless observer can scarcely fail to perceive that political power in this country, resides chiefly with that portion of the people which is engaged in agriculture, he who studies the operation of our system will find in the influence of the agricultural classes, a guaranty of peace, of good order and of the stability of our institutions. It might therefore be expected, that the policy of our government would be such as to favor the first and most important department of national industry. But no such favor has been extended, at least to the agriculture which employs free labor. Our workshops are chiefly in Europe; and yet the productions of the grain-growing states are virtually excluded from European markets by the operation of corn laws. Nor is this all. We import productions similar to those of our own soil; hemp from Russia, wine and silks from France, wool from Spain, and linen from Great Britain. The attention of the legislature has been called to the subject of agriculture, less from a hope that direct relief could be afforded, than under a belief that our fellow-citizens engaged in its pursuits, might be assisted in gaining the attention of the federal government. Two plans for promoting agricultural improvement have engaged public attention. One contemplated the foundation of agricultural societies, upon the model of that established in Berkshire county in Massachusetts. Associations of this kind have been heretofore formed in this and many other states, and have been productive of very beneficial results. The other plan proposed the establishment of a board of agriculture, and was advocated by an eminent citizen, now deceased, who adorned his life and enriched the state by studies exclusively practical and eminently useful.*

We have many earnest admonitions against a state debt, and against a national debt, from those to whom this generation is indebted for all its experience of either. But I confess that the

* Jesse Buel.

debt which it seems to me ought most carefully to be avoided, is that which results from an unrestricted importation of foreign luxuries, without an equivalent exportation of agricultural productions in exchange. The inhabitants of this state alone pay annually for foreign wines more than the interest upon the cost of all its canals and railroads; and for foreign silks an amount not less than the original cost of the Erie canal. Two provinces in Italy, with a population less than that of this state, and a climate represented as less genial to the mulberry and the silk-worm, export silk of the value annually of twenty-five millions of dollars. I can not believe that our country, and especially this state, will always be content to retain its tributary condition. I have observed with pleasure that the School District Library, now in the course of publication by the enterprising Harpers, contains several interesting and instructive treatises upon political economy and agriculture, which can not be without their just influence. The fruits of the seed thus scattered are sure to be gathered. It is only to be regretted that this generation should not allow itself to anticipate them.

It was submitted to your predecessors, that while we were obliged, by the laws of the United States, to preserve an extended and inconvenient organization of the militia, it would be just and consonant with the spirit of our institutions, that the taxes and burdens of the service should be reduced and equalized. Our fellow-citizens are enjoying the fruits of such a reform in the reduction of military fines, which was effected by a law passed at the last session. The rank and file of the militia are mustered twice in each year, once by regiments and once by companies, for the purposes of inspection, review, and martial exercise. These parades would perhaps be less inconvenient, if they were ordered on consecutive days. Experience, however, has proved that they are entirely insufficient for instruction in military science. The number of days assigned for such duty will certainly not be increased. The law of Congress could be complied with by an annual muster for inspection on one day only; and for this inspection a parade by companies would be more convenient than one by regiments. Uniformed volunteer companies might be safely relied upon for police; and the formation of such companies would be encouraged, by abridging their term of service

and by furnishing them with arms from the state arsenal under proper restrictions. This would not affect the law prescribing the drills of officers, non-commissioned officers, and musicians; and it might be beneficial to extend to this class some or all of the privileges allowed to uniform companies. Regimental courts-martial are inconvenient and oppressive. If the commandant of each company were required to report all delinquencies to a justice of the peace, that officer could be charged with the duty of imposing and collecting the penalties prescribed by law. It is a well settled principle of the Society of Friends, that its members can neither conscientiously bear arms, nor contribute for military purposes. The constitution defers to these scruples, by exempting those who entertain them from the performance of military duty; but it exacts a commutation, the avails of which the law directs shall be applied to the support of the militia system. To this commutation the Friends raise the same conscientious objection, and urge it in a manner sufficiently general and persevering to show that it is neither temporary nor capricious; while their known liberality proves that the objection does not arise from any unwillingness to bear an equal portion of the burdens of government. Every year produces instances in which the property of Friends is sacrificed, or their persons imprisoned for conscience' sake. In such cases I have never refused to remit the penalties imposed. But such a practice, if it should become general, would be an exercise of the pardoning power to abrogate a part of the organic law of the state. I am aware that the question has its difficulties. It is supposed that the grievance can only be removed by an amendment of the constitution; and there is not yet any sufficient evidence, that the people are prepared to make this concession to the consciences of those who ask it in that inoffensive spirit which marks all their public actions. I assume to speak only my individual sentiments when I say, that I respect the principle out of which the difficulty arises. Believing that war is the chiefest of national calamities, I am quite willing to see the principle of non-resistance obtain all the influence it is likely to acquire in this country, which above all others needs peace. For this reason, as well as because I regard concessions to conscience, in matters not affecting public morals, as essential to religious liberty, I should cheerfully consent to the amendment of the constitution in this respect.

I have, on all proper occasions, directed the attention of the legislature to the frequency of violations of the elective franchise. An act, passed in 1839, has had a beneficial operation in preventing what was called colonization in wards and towns, and in securing a more satisfactory scrutiny into the qualifications of persons whose right to vote is questioned at the polls. The act of 1840, regulating elections in the city of New York, has been universally satisfactory in its provisions for dividing the wards into election districts, and reducing the period for elections, to one day. Although the registry of voters under the law is alleged by many to be imperfect, and by others has been deemed altogether unjust and unnecessary, I am free to acknowledge my conviction that it has excluded many illegal votes; and I am not possessed of any satisfactory evidence, that its operation has deprived any citizen of his suffrage. Legislation concerning the elective franchise ought never to be governed by partisan views. The present season of repose from political contest is favorable to the adoption of measures which will be satisfactory to all. I recommend that the time allowed for holding the general election, and for the canvass in the several towns, be reduced to one day, and that to facilitate the proceedings and promote the convenience of voters, the towns and wards be divided into election districts by their respective inspectors.* To those measures it will be proposed by some of our fellow-citizens to add a registry of voters in cities and villages, while others will desire its extension throughout the state. The principle involved in these propositions is very simple. If a law establishing a registry can be passed, which in its operation will exclude no legal voters, and if illegal voting can in no other way be effectually prevented, such a measure ought to be adopted. But no law ought to be passed, which will cause unnecessary inconvenience to legal voters. Your better acquaintance with the exigencies of the case and with the sentiments of our fellow-citizens will enable you to dispose of the subject as will be most conducive to the general welfare. I recommend that it be made a felony for any unqualified person wilfully to vote, or cause his name to be registered; and that punishment no less severe be visited upon the unworthy citizen who shall aid or abet such crimes. He who gives, and he who takes a bribe, should not only be severely punished, but

* This reform was effected in 1842.—*Ed.*

be for ever afterward disfranchised. I recommend that the disfranchisement in such cases be made a part of the punishment incident to conviction, in the same manner as the incompetency to give testimony is in convictions for perjury. It is too much forgotten that in establishing universal suffrage, we have brought into operation a new element of government. It is the equal distribution of political power among all the citizens over whom power is to be exercised. Universal suffrage is the condition by which we secure universal acquiescence in the laws. But it is a mighty element of power, and requires the most perfect safeguards to secure its conservative and rightful action. We must not only establish all needful safeguards, but we must also constantly maintain them, and, after all, we must look more to the moral elevation of electors than to penal enactments to secure the purity of elections. No efforts which overlook any class enjoying the elective franchise, can be effectual to accomplish this great object.

Previous to 1802, no foreigner could be naturalized until after a residence of fourteen years. No one has better understood the tendency of republican institutions or entertained more just views of the principles upon which they were founded, than the illustrious statesman who, in that year, recommended to Congress an amelioration of the naturalization-laws.* "Considering the ordinary chances of human life," he observed, "a denial of citizenship under a residence of fourteen years is a denial to a great portion of those who ask it, and controls a policy pursued from their first settlement, by many of the states, and still believed to be of consequence to their prosperity. And shall we refuse the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our fathers arriving in this land? Shall oppressed humanity find no asylum on this globe? The constitution has wisely provided, that for admission to certain offices of important trust, a residence shall be required sufficient to develop character and design. But might not the general character and capabilities of a citizen be safely communicated to every one manifesting a bonafide purpose of embarking his life and fortunes permanently with us?" In concurrence with these suggestions, Congress passed the act now in force

* Jefferson.

concerning naturalization. Probably half a million of persons have, since that time, complied with its provisions, and secured to themselves the rights of citizenship; and there can not now be less than half that number of electors of foreign birth in the United States. This class is largely increasing. The number of emigrants arriving at the port of New York in 1828 was about twenty thousand. The number in 1840 was sixty-one thousand. Although the liberal and enlightened opinions of Jefferson have been the settled policy of the country for almost forty years, yet an issue is still maintained upon those opinions between a portion of our fellow-citizens and those to whom the law, passed in conformity with those sentiments, has given a full participation in our political rights and privileges. Hence arise mutual jealousies. The consequences of these jealousies are seen in the separation and alienation of classes having common interests; in the misfortunes of the weaker, in apprehensions of insecurity on the part of the stronger, and in the demoralization of portions of both; in frauds at elections and fraudulent proceedings under the naturalization laws. The policy and measures which I have recommended have, therefore, had for their object the elevation of the social condition of immigrants, and the assimilation of their habits, principles, and opinions, with our own.

Not much, however, can be accomplished by legislation to affect the relations between masses of adult citizens, and the change desired in this respect must be left chiefly to time and the operation of our institutions. But it is not so in regard to the rising generation. The census of the United States is said to show, that there are forty-three thousand eight hundred and seventy-one white persons in this state who have passed the age of twenty years without having learned to read and write. Let us make allowance for any proportion of adult foreigners, and there will yet remain a large number of uneducated native citizens. The number of children now growing up in the same manner does not fall short of thirty thousand. These are the offspring, not of prosperity and affluence, but of poverty and misfortune. Knowing, from the records of our penitentiaries, that of this neglected class, those are often most fortunate who, from precocity in vice, secure admission into the house of refuge or the stateprison through the

ways of crime, and knowing too that almost every application for pardon is urged on the ground of neglected education, I have felt it an imperative duty to appeal to the legislature, to render our system of education as comprehensive as the purposes for which it was established. Of one thousand and fifty-eight children in the almshouse of the city of New York, one sixth part are of American parentage, one sixth were born abroad, and the remainder are the children of foreigners; and of two hundred and fifty children in the house of refuge, more than one half were born either abroad, or of foreign parents. The poverty, misfortunes, accidents, and prejudices, to which foreigners are exposed, satisfactorily account to my mind for the undue proportion of their children in the neglected class to which the attention of the legislature was called. Although the excellent public schools in the city of New York are open to all, and have long afforded gratuitous instruction to all who sought it, nevertheless the evil exists there in its greatest magnitude. Obviously, therefore, something more is necessary to remove it than has yet been done, unless we assume that society consents to leave it without a remedy. These circumstances led me to the reflection, that possibly a portion of those whom other efforts had failed to reach might be brought within the nurture of the schools, by employing for their instruction teachers, who, from their relations toward them, might be expected to secure their confidence. When the census of 1850 shall be taken, I trust it will show that within the borders of the state of New York, there is no child of sufficient years who is unable to read and write. I am sure it will then be acknowledged that when, ten years before, there were thirty thousand children growing up in ignorance and vice, a suggestion to seek them wherever found, and win them to the ways of knowledge and virtue by persuasion, sympathy, and kindness, was prompted by a sincere desire for the common good. I have no pride of opinion concerning the manner in which the education of those whom I have brought to your notice shall be secured, although I might derive satisfaction from the reflection, that amid abundant misrepresentations of the method suggested, no one has contended that it would be ineffectual, nor has any other plan been proposed. I observe, on the contrary, with deep regret, that the evil remains as before; and the question recurs, not merely how or by whom shall instruction be given, but whether it shall be

given at all, or shall be altogether withheld. Others may be content with a system that erects free-schools and *offers* gratuitous instruction; but I trust I shall be allowed to entertain the opinions, that no system is perfect that does not accomplish what it proposes; that our system is, therefore, deficient in comprehensiveness, in the exact proportion of the children that it leaves uneducated; that knowledge, however acquired, is better than ignorance; and that neither error, accident, nor prejudice, ought to be permitted to deprive the state of the education of her citizens. Cherishing such opinions, I could not enjoy the consciousness of having performed my duty, if any effort had been omitted, which was calculated to bring within the schools all who are destined to exercise the rights of citizenship; nor shall I feel that the system is perfect, or liberty safe, until that object be accomplished. Not personally concerned about such misapprehensions as have arisen, but desirous to remove every obstacle to the accomplishment of so important an object, I very freely declare that I seek the education of those whom I have brought before you, not to perpetuate any prejudices or distinctions which deprive them of instruction, but in disregard of all such distinctions and prejudices. I solicit their education, less from sympathy, than because the welfare of the state demands it, and can not dispense with it. As native citizens, they are born to the right of suffrage. I ask that they may at least be taught to read and write; and, in asking this, I require no more for them than I have diligently endeavored to secure to the inmates of our penitentiaries, who have forfeited that inestimable franchise by crime, and also to an unfortunate race, which, having been plunged by us into degradation and ignorance, has been excluded from the franchise by an arbitrary property-qualification incongruous with all our institutions. I have not recommended, nor do I seek, the education of any class in foreign languages, or in particular creeds or faiths; but fully believing with the author of the Declaration of Independence, that even error may be safely tolerated where reason is left free to combat it, and therefore indulging no apprehensions from the influence of any language or creed among an enlightened people, I desire the education of the entire rising generation in all the elements of knowledge we possess, and in that tongue which is the universal language of our countrymen. To me the most interesting of all our republican insti-

tutions is the common school. I seek not to disturb, in any manner, its peaceful and assiduous exercises, and least of all with contentions about faith or forms. I desire the education of all the children in the commonwealth in morality and virtue, leaving matters of conscience where, according to the principles of civil and religious liberty established by our constitution and laws, they rightfully belong.

The policy of the state in regard to internal improvements has been a subject of much difficulty. In 1839, the state having completed the Erie and Champlain, the Chenango, the Oswego, the Cayuga and Seneca, the Chemung, and the Crooked Lake canals, and having thus opened to the city of New York an inland navigation of four thousand five hundred miles, was found engaged in enlarging the Erie canal to the dimensions of seventy feet in width by seven feet in depth, in making the Genesee Valley and Black River canals, and in aiding by the loan of its credit the construction of the New York and Erie, the Auburn and Syracuse, the Ithaca and Owego, and the Catskill and Canajoharie railroads. The report of the comptroller showed that the debt which had been contracted for the construction of the Erie and Champlain canals was virtually paid; that the liabilities for the completed lateral canals were about three and a half millions of dollars, which, added to the remaining debt of the state, exclusive of debts assumed for the unfinished works, made an aggregate of four and a half millions of dollars. The estimated expense of the works in progress, as appeared by the report of the canal commissioners, was about fifteen and a half millions of dollars; which, if added to the existing debt, would have made an aggregate of about twenty millions, the annual interest of which would be one million. The tolls of the Erie and Champlain canals, after deducting the expenses of collection, had increased from $839,925 in 1826, to $1,504,384 in 1836; and although the tolls were diminished during the commercial revulsion of 1837 and 1838, yet their future increase could not be subject for doubt, and it was equally certain that they would be accelerated and augmented by the growth of the trade from the western states, and by the reduction of the expense of navigating the Erie canal when it should be enlarged. The canal commissioners communicated to the legislature their opinions, that in a few years after

the completion of the enlargement, the tolls would amount to three millions of dollars. If from this sum even one million of dollars were to be allowed for the expense of superintendence and repairs, the enlarged Erie canal would yield a revenue of two million of dollars, double the amount required to pay the interest on the debt of twenty millions of dollars. The annual net revenue of the state, after the completion of the enlargement, would therefore be one million of dollars. The view thus taken in 1839, of the existing and anticipated condition of the state was regarded by me as justifying the vigorous prosecution of the public works, and the expression of a confident hope that the time had come when the state might realize the long-cherished expectation of an extension of her system of internal improvements. Experience has fully confirmed the positions then assumed, so far as they depended on the revenue from the canals. The tolls during the season of navigation in 1840, were $1,775,747 57. The legislature of 1836 had directed stocks to be issued to the amount of two millions eight hundred thousand dollars, for the construction of the Genesee Valley and Black River canals; and the legislature of 1838, under an earnest recommendation by my predecessor of a vigorous and speedy prosecution of the enlargement of the Erie canal, had appropriated four millions of dollars to that object. The canal commissioners, under an explicit direction of the legislature to put under contract, with as little delay as possible, such portions as would best secure the completion of the entire enlargement with double locks on the whole line, had made contracts for one half of the whole improvement. Those who, in 1839, came into the conduct of public affairs addressed themselves, in good faith, to the performance of their duties in regard to the public works. A sudden change, however, then occurred. The official report of the retiring comptroller, unlike the glowing view of the fiscal condition of the state, which had, in 1836, induced the legislature to undertake the construction of three stupendous works, and had impelled the legislature of 1838 to expedite the prosecution of that one which was more expensive than all the improvements which the state had made, exhibited a dark picture of irredeemable debt and perpetual taxation. The policy to which, under the auspices of the previous administration, the state was committed, and to which it had already devoted twenty millions of dollars, besides having pledged its credit in aid of

associated enterprise to the extent of four a half millions, was now represented as involving the people in a debt of forty millions of dollars; and what was still more extraordinary, all the responsibility of the policy was assigned, not to the administration under whose auspices it had been adopted, nor to the legislatures of 1836 and 1838, by whom all the appropriations had been made, but to an administration upon which had devolved the duty of finishing works long before begun, by which no money had been expended, and under which no appropriation had been made. In a report made in 1839, the discovery was promulgated by the late comptroller, that the Erie and Champlain canals, whose revenues had been relied upon by the legislatures of 1836 and 1838, as justifying an expenditure of twenty millions of dollars in new enterprises, had never yielded revenues equal to the interest on their cost. Although the dimensions of the enlarged canal had, in 1835, been fixed at seventy feet in width by seven feet in depth, and although one half of this great work was under contract, it was pretended to be further discovered that the enlargement had been undertaken upon a scale absurd in magnitude and profligate in expense. It was proposed to reduce the dimensions to sixty feet in width and six feet in depth; and it was contended that no enlargement whatever would be necessary for the purposes of trade for a period of ten, twenty, or thirty years. It was maintained by the opponents of internal improvement, that the construction of the Black River and Genesee Valley canals and the maintenance of the faith of the legislature, pledged in 1838 to the New York and Erie Railroad Company, were in policy as inconsistent with the true interests of the state, and as useless and dangerous, as would be the creation of titles of nobility with patents of numerous landed estates, requiring an outlay of twenty-five millions of dollars, and an annual stipend of more than one million to be raised by taxes upon the people. It was also insisted that the first business of legislation should be to repeal the laws authorizing the construction of the Genesee Valley and Black River canals, and also the laws authorizing loans to canal and railroad companies, to stop the enlargement of the Erie canal, or circumscribe it within reasonable bounds, to raise the tolls on the lateral canals so that the revenues from those canals might pay the interest on their cost and the annual expense of their repairs, and

to relinquish such of them as could not be made to do so.* And all this was urged, as if the sudden abandonment of those enterprises would not involve in wretchedness thousands of families, and as if our state, whose successful policy had been adopted as a model by other states, and had elicited the admiration of mankind, had suddenly become destitute of wisdom, honor, and good faith. History may safely be charged with the duty of assigning the reasons for such singular inconsistencies. It is necessary, however, for the present purpose, to observe that the same canal commissioners who had, in 1836, estimated the cost of the works which the state then assumed, at fifteen and a half millions of dollars, when required, in 1839, to re-examine their estimates, reported the cost of the same works at thirty and a half millions, and that, consequently, the debt to which the state had become committed arose from twenty millions to thirty-five millions, requiring an annual expenditure for interest of one million seven hundred and fifty thousand dollars. The discovery of this extraordinary error in the estimates of the commissioners happened in a conjuncture when, although the credit of many of the states was brought to a crisis, the spirit of internal improvement pervaded the community, and our fellow-citizens, relying upon the views of our resources before presented, were looking confidently to the public treasury for appropriations to various improvements in which they justly felt an absorbing interest. The immediate results at home and abroad were a severe shock to confidence in the faith of the state, an alarm for its ultimate solvency, jealousies in each region in regard to improvements immediately beneficial to others, and impatience in every portion of the state for such immediate and large appropriations as would secure the construction of favored works before the apprehended catastrophe should take place. It was doubted for a time whether the tendency of all this was to a desperate compromise by reckless expenditure, or to an immediate suspension of all the public works.

The policy recommended by me in this emergency was to retrench expenditures, and persevere in the construction of the public works with moderation and economy, to refer the plans of all the unfinished improvements, including the enlargement

* See Reports of the Hon. A. C. Paige, and the Hon. Samuel Young in the senate, 1840.—*Ed.*

of the Erie canal, to competent engineers to ascertain what portions of the same might be delayed without detriment to the public interest, and what expense might be saved by executing other portions in a manner equally effective, but more plain and economical, and to establish a canal board for the purpose of preventing erroneous estimates and inconsiderate legislation. It was moreover especially insisted, that, with a view to guard against a dangerous increase of debt and the possibility of taxation, all issues of stock should thenceforth be so limited that the whole debt of the state should at all times be kept within such bounds, that the interest on it should not exceed the net revenue from canal tolls, and that the increase of that revenue should be devoted to the extinguishment of the public debt. It was assumed that although the adoption of this rule might seem to delay for a season the progress, it would insure the completion of the great works in contemplation in different parts of the state, and it was maintained that the retardation, which had become necessary, from causes so obvious, ought by no means to be considered as an abandonment of the policy of internal improvement, but that on the contrary such retardation was indispensable, and was indeed the only mode of carrying it forward with certainty and success. This policy, which in its more important parts prevailed in the legislature of 1840, is respectfully recommended to your favor.

I tender you my congratulations upon the happy termination of the embarrassments to which it has been my duty to refer. The people of the state have stood firm by the pillars of her strength and glory. Time enough has elapsed to show that our fiscal condition is sound; that, although the expense of our improvements was erroneously estimated, our revenues are abundantly adequate; and that, with judicious management, we can persevere firmly in the policy of internal improvement, with a confident expectation of accomplishing ultimately all that has been contemplated.

The eastern section of the Erie canal has, during the last season, been subjected to a test of its ability. From the opening to the close of navigation, a period of seven months and a half, there was an average lockage at each lock of one boat in eleven minutes. The irregular arrival of boats has caused much detention and frequent delays of several days. The immediate enlarge-

ment, therefore, of this portion of the canal is indispensable to the public convenience, and to the security of trade. One million, eight hundred and five thousand, one hundred and thirty-five barrels of flour, and one million, three hundred and ninety-five thousand, one hundred and ninety-five bushels of wheat, were delivered at the eastern termination of the canal during the past season. Six hundred and forty-six thousand, nine hundred and seventy barrels of flour, and one million, four hundred and sixty-seven thousand, nine hundred and four bushels of wheat entered the canal from Lake Erie. Of the flour and wheat which entered the canal at Buffalo, five hundred and five thousand, two hundred and sixty-two barrels of flour, and seven hundred and twenty-five thousand, and twenty-five bushels of wheat, were received from Ohio, one hundred and twelve thousand, two hundred and fifteen barrels of flour, and ninety-seven thousand, two hundred and forty-nine bushels of wheat, from Michigan, thirteen thousand, seven hundred and twenty-six barrels of flour, and forty-eight thousand, two hundred and seventy-nine bushels of wheat, from Indiana, two thousand, two hundred and fifty-nine barrels of flour, and ten thousand, six hundred and thirty-four bushels of wheat, from the state of Illinois, and one hundred and sixty-six barrels of flour from the territory of Wisconsin.

These facts serve to show, not only how safely we may rely upon a continued increase of revenue, but also how much we are indebted to our system of internal improvement for the supply of our markets. If such benefits are enjoyed while the navigation of the Erie canal is imperfect, and while the western states are yet in their infancy, no estimates heretofore made have approximated to the results which will be exhibited when the Erie canal shall have been enlarged, the western states fully settled, and their improvements completed. The earliest practical notice should be given of the time when the enlargement shall be finished. The capital, invested in boats and other property used in navigating the canal, exceeds three millions of dollars. Very extensive business arrangements among our fellow-citizens will be affected by the improvement in navigation, and time should be allowed to prepare for the change.*

It is the peculiar and rightful province of the legislature to

* The legislature of 1841 responded to these views by making liberal appropriations for the completion of all the public works.—*Ed.*

determine the amount to which the appropriations can be carried, and to give them their direction. I may be permitted, however, to observe that the object of internal improvement is not to confer local advantages, but to promote the general welfare; that, although revenue is necessarily an intermediate, it ought not to be the ultimate object of the system, that moderation and economy are required even less to save us from the effects of improvidence, than because they are necessary to render the system as comprehensive as the wants of the state. Legislative action should, therefore, always have in view the improvement of every region. Although some portions of the state may excel others in producing one staple, no portion is without fertility and resources of wealth. There are some regions in which canals would be impracticable or unprofitable, but there are none in which some form of modern improvement can not be successfully introduced. No one who studies the general welfare should wish to have the productions of one district dependent for a market upon the precarious navigation of fordable rivers, while those of another should be transported upon an enlarged canal or by steam-power; to see mails carried weekly through one portion of the state by the slow post-wagon, while other portions of our citizens should be receiving daily intelligence, transmitted by railroads. Those who suppose that natural obstacles, wherever existing, can not be overcome or removed, and that the course of trade can not be affected by artificial improvements, may contemplate with advantage the success which has crowned the efforts of our state in concentring, in its own market, the trade of its northern, southern, and western counties, which thirty years ago had no other channels of trade than rivers flowing toward widely distant ports. Another example will soon be afforded, in the successful attempt of the citizens of Massachusetts to divert from the valley of the Hudson, at least the winter travel and trade between this city and the seashore; an enterprise which they are prosecuting firmly and rapidly, while in regard to that particular interest we are relying upon the sublime but hazardous theory of leaving the course of trade to the laws impressed by God upon mind and matter.*

Although seventeen millions of people have founded their cities and established their homes under our laws, less than one

* Report of the Hon. Samuel Young.

third of the territory within the boundaries of the confederacy is occupied or appropriated. What remains is the national domain. Every acre of it has a value—for its future improvement is as certain as the present cultivation of the lands we occupy. At the close of the Revolution, a failure of the public credit effectually prevented the prosperity expected to follow the establishment of independence and the return of peace, while the efforts of the states to establish a more perfect union were embarrassed by their conflicting claims to the vast wilderness lying beyond the western settlements. With magnanimity characteristic of the Revolutionary period, each state ceded its interest to the federal government as a trustee. The whole domain was thus made the common property of all, and it was pledged to the public creditors as a basis for the redemption of the funded debts of the Union. In 1833 those debts were discharged. The revenues derived from imposts upon imported merchandise are, or ought always to be, adequate to the ordinary expenses of the government. Although those revenues may be temporarily disturbed and diminished by errors in the laws regulating them, or by foreign war, or commercial revulsion, yet they soon regain their regularity and fullness, and the chief difficulty in conducting the affairs of the federal government has heretofore been, and is likely always to be, how to keep the revenues within the bounds of reasonable expenditure, without withdrawing all protection from national industry. The reason is obvious. The states have reserved the chief responsibilities and powers of legislation for the public welfare, but have yielded to the general government an undue proportion of the taxes. The maintenance of public defence is sometimes made a pretext for withholding from the states the proceeds of the national domain. But extensive military preparations in time of peace are generally preparations to compel subjection at home, and to subvert free institutions. It may safely be left to the people to decide which are the best defences of liberty, common schools or fortifications, canals and railroads, or standing armies. Danger from foreign aggression is manifestly diminishing, and if unhappily the scourge of nations shall fall upon us, the ability of the states to maintain the public defence would be increased, by the distribution among them of the revenues from the public domain. Experience has proved that the organization of the general government is ill adapted to secure

accountability, at least on the part of its subordinate agents. The executive, from whom all such agents derive their powers, is too independent of Congress, and every department is quite too far removed from the people to allow that popular supervision, which is so salutary in its operation upon similar functionaries in the several states. The distribution of the avails of the public lands was resisted last year by misrepresenting it as a measure by which the general government was to assume or guaranty the debts of the several states. So far as I am informed, no such proposition has been contemplated by any one of the states. But the occasion and the motive for this misrepresentation having passed, it is hoped that the true question may now be brought before the people on its merits. When we remember that the distribution heretofore made of the surplus revenue was attained with much difficulty, and then only escaped an executive veto, by receiving the form of a loan to the states; when we remember that a bill which had passed both houses of Congress, directing an apportionment of the avails of the sales of the public lands, was lost for want of approval by the president, and that subsequently a bill to release, without equivalent, a large portion of the domain to the new states within which it lies, was passed by the senate, and that a similar bill is now before that body, we shall be satisfied that the true form of the question is, whether those revenues shall now be distributed, or be lost for ever.

So long ago as 1806, the discharge of the national debt, and the consequent accumulation of surplus revenues from imposts and the public lands, were foreseen by the enlightened and sagacious statesman* who then occupied the executive department of the federal government. In two annual messages, he earnestly insisted that the anticipated surplus should be appropriated to the improvement of roads, canals, rivers, education, and other great foundations of prosperity and union, and he suggested an amendment of the constitution for this purpose. The accumulation foreseen by President Jefferson was delayed by interruptions of our commerce until 1833. The eminent citizen,† who, in 1829, entered upon the duties of the executive department, observed, in his first message, that every member of the Union, in peace

* President Jefferson. † President Jackson.

and in war, would be benefited by the improvement of inland navigation and the construction of highways in the several states. "Let us, then," he added, "endeavor to attain this benefit in a mode that will be satisfactory to all. That hitherto adopted has, by many of our fellow-citizens, been deprecated as an infraction of the constitution, while by others it has been viewed as inexpedient. All feel that it has been employed at the expense of harmony in the legislative councils. To avoid these evils, it appears to me that the most safe, just and federal disposition, which could be made of the surplus revenue, would be its apportionment among the several states, according to their ratio of representation." This suggestion by President Jackson met a favorable response throughout the Union, and was especially approved in this state. The governor,* in his message of 1830, observed. "Our funds applicable to the extension of our public works may be augmented at no distant day, from a new source. The duties upon the importation of merchandise are secured, by the constitution of the United States, to the general government, and have been its greatest source of revenue for all purposes. In a very few years the national debt will be paid off, and as but a small portion of the revenue will be consumed in conducting the affairs of the Union within the constitutional limits, and as there are prudential reasons for continuing the duties, to a certain extent, there can be no valid objection to a distribution of the surplus revenues among the states, to be disposed of at their discretion. If constitutional obstacles exist against the measure, they may be removed by constitutional means."

I acknowledge my inability to present a full view of the benefits this great measure would confer upon the people of this state. Our seminaries of learning are now enjoying an annual endowment of two hundred and eight thousand dollars, arising from the apportionment heretofore made. The amount of the revenues from the public lands for the present year, as estimated by the secretary of the treasury of the United States, will be three and a half millions of dollars, of which the share of this state would be near three hundred thousand dollars. An imperfect idea of the rapid settlement of the public lands may be conceived from the fact, that the population of the state of Indiana has increased, within the last ten years, from three hundred and

* Hon. Enos T. Throop.

forty-one thousand, to six hundred and eighty-three thousand; and that of the state of Michigan, from thirty-one thousand, to two hundred and eleven thousand. What the actual value of our share of such a distribution would be, can not be estimated; but it may safely be assumed that it would far exceed all that we have expended in the construction of canals and roads, the foundation of charities, the erection of penitentiaries, and the endowment of colleges, academies, and schools. After such an accession to our revenues, the various enterprises of internal improvement would no longer be rivals, prosecuted against the influence of local jealousies and alarms of taxation. The present generation would anticipate the blessings in store for posterity, and every portion of the state would be admitted immediately to their enjoyment. It would be in our power, not only to extend our system of improvement, but also to increase in various other ways the general happiness. We are now obliged to practise a cold and calculating charity. We have more than twenty-three hundred lunatics in the state, yet we have made provision for the relief of only two hundred and fifty. We have more than a thousand deaf and dumb persons; yet we are obliged to select by favor from among them, instead of pouring the lights of truth and knowledge into the minds of all. Our almshouses are perhaps sufficiently convenient for those who are brought into them by idleness and vice; but do they afford all the enjoyments we would be happy to yield to the aged, the sick, the widow, and the orphan, whose afflictions are the result of Providential visitation, unattended by vice or error of their own? Should we longer contend about the apportionment of moneys devoted to education, if our funds were ample for the full endowment of all our seminaries of learning? Would there not be an end to the great fault of our common schools, the small compensation paid to teachers, if we could adequately increase the Common-School Fund, upon which we rely for the education of more than half a million of children? But if it be maintained that enough has been done for the relief of wretchedness and for the improvement of the foundations of prosperity and union, what reason can be assigned why, with the revenues in question acknowledged to be the property of the people, the burdens of the people should not be diminished? Let us bring annually into the treasury of the state her proportion of these revenues, and our fellow-citizens

can be relieved from the burden of repairing common roads, and of paying tolls upon canals, railroads, and turnpikes, and from the heavy expenses of the administration of justice and the support of schools and charities. We are sometimes called, by the adversaries of internal improvement, to contemplate a condition of exhausting taxation. Who can object to a measure which would secure a very general exemption from the burdens of government?

But we shall derive from a distribution of the surplus revenues other advantages than those resulting directly. We are to participate largely in the benefits conferred upon other states. Our system of internal improvement is only a part of that entire system contemplated by the Father of our country, and relied upon by him to accomplish the object of his earnest solicitude—the binding of the states together in an indissoluble union of affection and interest. Not to dwell upon the importance of thus securing the ark of our political safety against the storms to which it must sooner or later be exposed, we have interests of a subordinate character, in the completion of the public works of our sister states. If such a distribution should be made, we should be able, if we are not now, to connect the Chenango, the Chemung, and the Genesee Valley canals, with the railroads and canals of Pennsylvania, to render them productive of revenue, and at the same time to give a new impulse to our domestic trade. Lake Ontario and the St. Lawrence river would no longer be separated from the central valley through which our commerce flows, but the vast territory which intervenes would be traversed by railroads and canals, its forests would disappear, its soil would be rendered productive, and its mineral wealth be no longer left among the neglected resources of the state. Ohio proceeds in her system slowly. Michigan labors under great difficulties in her efforts to construct roads that will establish a connection between her inland regions and Lake Erie. Indiana and Illinois are struggling with extreme embarrassment in the prosecution of works upon a scale of equal magnitude with our own. It is not surprising that the financial difficulties of those states are magnified, and their credit traduced in the stock-markets of Europe. But it is strange, indeed, when we reflect that they are members of this confederacy, parts seeking closer union with the great whole, that they should be visited with the censure of

the federal government,* in a season of embarrassment, and that the senate of the United States should, in the face of the world, gratuitously refuse to grant, in their behalf, a guaranty which they have never solicited and never desired.† One might suppose, from the cold speculations sometimes heard among ourselves concerning the improvidence of those states, that they were hostile or at least rival powers, and that our security and prosperity rose with the decline of theirs. Yet it is far otherwise. They are communities bound to us by interest, as well as by consanguinity between their citizens and our own; their prosperity is our prosperity, and no calamity falls upon them by which we do not suffer, although we may withhold our sympathy. The great lakes, about twenty-five hundred miles in length, may be regarded as a prolongation of the canal we have made across the isthmus which separates their waters from those of the Atlantic. Following the policy which has dictated the construction of our lateral canals, the states situated upon the shores of those lakes have severally undertaken the construction of improvements, to connect their interior regions with these inland seas. The Ohio canal, three hundred and twenty miles in length, reaching from Lake Erie to the great river which separates the states of Ohio and Kentucky, secures to us the trade of the nearer regions of the great west. The trade of the central portion of the west will be given to us by two other improvements, to wit, the Wabash and Erie canal, two hundred and thirty-four miles in length, extending from Lake Erie through the states of Ohio and Indiana, to the navigable waters of the Wabash river; and the Miami canal, two hundred and ten miles in length, reaching from the lake to the north bend of the Ohio river, and connecting with the Wabash canal at Fort Defiance. The canal of Illinois will extend to the Mississippi the navigation we now enjoy, and will thus bring to us the trade of the remotest western settlements. Of these canals the Ohio is already completed. That portion of the Wabash and Erie canal, one hundred and forty-four miles long, which lies partly within the state of Indiana, is finished, and the remaining portion, ninety miles in length, lying within the state of Ohio, is yet incomplete; but the late governor of

* President's Message, 1839.

† Resolution introduced into the senate by Hon. Thomas H. Benton. See also the Report of Hon. Felix Grundy.—*Ed.*

that state, in his last message, gave an assurance that it would be ready for navigation during the present year. Of the Miami canal, nearly the whole is under contract, and more than one hundred miles have been completed. Of the Illinois canal, which will cost about eight millions of dollars, about one half is finished, and the construction of the remainder, unhappily retarded by financial embarrassment, might be hastened by the aid which the state of Illinois has a right to claim from the general government, or by a speedy distribution of the proceeds of the public lands. When we consider the vast amount and value of the agricultural productions received from the Ohio canal alone, the only one of those canals yet in full operation, we can form some imperfect conception of the interest we have in the success of the system of internal improvement in the western states. And when such conceptions become as familiar as they are just, we shall manifest more of wisdom than even of philanthropy, by lending our western brethren all the aid in our power to complete what none but free and enlightened states could ever have undertaken. Views similar to these were commended to your predecessors and received their approval. If they accord with your own, I respectfully suggest the propriety of renewing the expression heretofore made in favor of the great measure I have advocated.*

The citizens of the United States, have, within the last year, in a manner prescribed by their own laws, in perfect tranquillity, chosen by free suffrage, and with universal acquiescence, the magistrates by whom the powers of government shall be exercised under legal responsibilities, until those powers shall again return to the people. However we may have differed concerning the questions which have been considered, all will agree that the peacefulness and good order, which have attended the proceeding, furnish ample proof that the people may safely be allowed to discuss every measure that concerns their welfare; and that neither force nor fraud is necessary to secure submission to rulers, where power is limited, reason enlightened, and suffrage universal.

The elected chief magistrate† of the Union will enter upon his

* The measure here so earnestly advocated was adopted by Congress at the extra session in 1841; but, in consequence of the strenuous resistance of President Tyler to that policy, it was afterward necessarily virtually repealed. The president made such a repeal a condition of approving the tariff law.—*Ed.*

† General William Henry Harrison

trust with favorable auspices. The public good requires, and the public mind consents to, repose. Fortunate in experience of public service in the senate and the field, in executive and diplomatic stations; fortunate in exemption from prejudice in favor of any erroneous policy hitherto pursued; fortunate in the enjoyment of his country's veneration and gratitude, and especially fortunate in having at once defined and reached the boundary of his ambition, the president can have no other objects than the public welfare and an honorable fame. The people expect that he will preserve peace, maintain the integrity of our territory and the inviolability of our flag, co-operate with Christian nations in suppressing piracy and the slave-trade, avoid alliances for every other purpose, conduct our foreign relations with firmness and fairness, terminate our controversies with the Indian tribes, regain their confidence and protect them against cupidity and fraud, confine the action of the executive department within constitutional bounds, abstain from interference with elections and the domestic concerns of the states; defer to the wisdom of Congress, and submit to the will of the people; observe equal and exact justice to all men and all classes of men, and conduct public affairs with steadiness, that enterprise may not be disappointed; with economy, that labor may not be deprived of its rewards; and with due accountability of public agents, that republican institutions may suffer no reproach. If he shall endeavor to meet these expectations, no discontents can affect—no opposition can embarrass him; for he will act in harmony with the spirit of the constitution and with the sentiments of the people. And when, like him whose fame is unapproachable, but whose wisdom and moderation this distinguished citizen has adopted as his great example, he shall have healed his country's wounds and restored her happiness and prosperity, he will enjoy the rare felicity of a retirement, more honored than even his distinguished station.

When called two years since to survey the state for the purpose of submitting the result to the legislature, I could not fail to observe everywhere enduring impressions of the wisdom of De Witt Clinton. When considering how I could in any way contribute to diminish the burdens of the people, to promote public prosperity, to diffuse knowledge, to favor agriculture and encourage the arts, to develop the resources of the state, and to extend its interior communications by land and water, and equalize the advantages

of free government among all my fellow-citizens, I could not fail to see that his genius had marked out in all these respects the policy which the state, in the emulous spirit expressed by her noble motto, could pursue to a higher and happier social condition than had ever yet been attained by any community. When reflecting upon the misapprehensions, difficulties, and embarrassments, to be encountered, I found in his great fame an evidence that such a policy might be pursued with safety, although it must sometimes come in conflict with temporary interests and local jealousies. Under the influence of feelings inspired by the occasion, I ventured to express a hope that the time had arrived when the state was prepared to acknowledge her obligations to so distinguished a benefactor. In this suggestion I confess that I anticipated, but I trust not by any very long period, the justice of my fellow-citizens.

ANNUAL MESSAGE TO THE LEGISLATURE.

JANUARY 4, 1842.

FELLOW-CITIZENS OF THE SENATE AND ASSEMBLY:

THE inhabitants of this state have been permitted again to till the earth in peace, and gather its fruits with gladness. Industry has enlivened our towns, and health has cheered our dwellings. Benevolence has been assiduous in all its interesting offices, and eminently successful in diminishing intemperance, the chief source of suffering and vice. Learning has imparted its instructions, and religion has diffused more widely than ever its renewing and consoling influences. With such distinguished blessings has the Divine goodness crowned the year, although its seasons, as they passed, were shadowed by accidents, on land and water, fearfully destructive of human life; by apprehensions of want: the terrors of mysterious crime; alarms of war; rumors of conspiracy and popular commotion: and the death of a revered chief magistrate, amid the rejoicings which attended his accession. It becomes us, therefore, to commence our deliberations for the public good, with humble acknowledgments of dependence on the Most High, and fervent supplications that he will be pleased to vouchsafe to our country a continuance of the Divine protection and favor.

The duties of the several departments of the administration have been performed with diligence. The new state-hall has been completed, and is no unfit monument of the prosperous condition of the state. I respectfully suggest that engineers and architects should henceforth be required to deposite in the public

NOTE.—Governor Seward was compelled to encounter a decided opposition in both branches of the legislature of 1842, and notwithstanding all his efforts to the contrary, the public works of the state were suspended, including the enlargement of the Erie canal.—*Ed.*

archives their plans, estimates, maps, and models of canals, railroads, and public edifices.

The Asylum for the Insane is ready for the reception of those who are to be its inmates, and it devolves upon you to prescribe the management of the institution. While your sedulous care will overlook none of that unhappy class, prudence, justice, and humanity recommend that persons acquitted of crimes on the ground of mental aberration, should be brought under sanitary discipline.

The geologists are engaged in arranging our extensive cabinet, and in publishing their final reports. The sum of one hundred and four thousand dollars, in four equal annual payments, was appropriated for the survey. Its prolongation another year, by a law passed in 1840, renders it necessary to replenish the proper fund.

The Journals of the Provincial Congress have been printed in pursuance of a resolution of the legislature; and the volumes will be found to contain abundant memorials of the virtues and sacrifices of our ancestors. The government of the Netherlands has opened its archives to our researches with such liberality and kindness as will increase our affectionate veneration for the people to whom the state traces its origin. Great Britain has received our application with less favor. The history of the American colonies is, at least, no unworthy episode in that of England, and its interest will increase with the lapse of time. We can not illustrate the character of our ancestors without illuminating the principles of English liberty, and the genius and virtues of Englishmen. The president of the United States has, at my request, instructed our minister to renew the application.

The resolutions proposing amendments of the constitution, having been published, invite your reconsideration in that spirit of candor, concession, and patriotism, which ought especially to prevail in changing fundamental laws. If the amendments shall be found suitable to promote a more efficient administration of justice, they will be hailed with much satisfaction by the people.

I lay before you a law of Virginia, calculated to embarrass our commerce. The effect of the act is postponed until May next, and the governor is authorized further to suspend it whenever the executive authority of this state shall surrender three persons

heretofore demanded by the lieutenant-governor of that commonwealth as fugitives from justice, and the legislature shall repeal the law extending the trial by jury. I have respectfully informed the authorities of Virginia, that my convictions of the illegality of that requisition are unchanged; and that although New York, from motives of self-respect and devotion to the Union, will not retaliate, nor even remonstrate, yet that she can not consent to remain a respondent, since Virginia has seen fit to transcend the sphere assigned her by the federal constitution, and to pass an aggressive law; but that this state will cheerfully return to a discussion of the subject, with a sincere desire to arrive at a conclusion mutually satisfactory and conducive to the general harmony, whenever the effect of that unfortunate statute shall have been removed by the action of our sister-state, or by an overruling decision of the supreme court of the United States. The legislature will decide whether the trial by jury shall be relinquished, and whether a state, which acknowledges no natural inequality of men, and no political inequality which may not ultimately be removed, shall wrest that precious shield from those only, whose freedom is assailed, not for any wrong-doing of their own, but because the greatest of all crimes was committed against their ancestors. Taught as we have been by the founders of the constitution, and most emphatically by the statesmen of Virginia, we can not renounce the principle that all men are born free and equal, nor any of its legitimate consequences. But we can, nevertheless, give to Virginia, and to the whole American family, pledges of peace, affection and fidelity to the Union, by relying upon legal redress alone, and by waiting the returning magnanimity of a state whose early and self-sacrificing vindication of the rights of man has entitled her to enduring veneration and gratitude.

I submit, also, for your information, a correspondence between the governor of Georgia and myself, which my respected contemporary has made a subject of some comment in communications to the legislature of that state.

Nineteen associations under the General Banking Law, and five Safety Fund institutions, have been closed. I recommend that measures be adopted to replenish the Bank Fund without delay, and that it be exempted from liability for private deposites. To guard hereafter, against fraudulent excesses of circulation, I

suggest that the Safety-Fund institutions may be required to receive their circulating notes from the bank commissioners, or the comptroller. While I can not doubt that you will adopt these or more suitable measures to sustain the currency and correct abuses in banking, I am sure that no harsh or injurious spirit will be indulged toward institutions which, deriving their powers from public grants, have performed their trusts with general fidelity, and whose stability is intimately connected with the public interests and the general welfare.

More than a hundred years ago, the legislature solemnly denounced a forcible seizure of the lands of the Six Nations, as an act that would be not merely unjust, but perfidious and ungrateful to time-honored and faithful allies. The lapse of time has wonderfully changed the condition and relations of the parties. but it has not diminished the sanctions of justice, nor weakened the motives of philanthropy. I invite your attention, therefore, to the allegation of the survivors of that heroic and unfortunate people, that the late treaty by which they surrendered the remnant of their lands, under the sanction of the government of the United States, was procured by circumvention and fraud.

It is supposed that in reorganizing the congressional districts, you will, as far as possible, adopt the principle that representation is most perfect where the districts are not only equal, but as numerous as the delegates; and it is confidently expected by our fellow-citizens, that you will divide large towns and wards into convenient districts, and direct that the annual elections shall hereafter be held on one and the same day throughout the state.

According to reports received at the state department, there have been four hundred and ninety-seven convictions of felonies, including six capital cases, and about four thousand convictions of misdemeanors and minor offences, showing an increase of felonies by fifty-seven, and of inferior violations of law in a greater proportion. The reformation of offenders has been steadily kept in view in the discipline of the prisons, and no complaint of inhumanity has reached me. The fiscal condition of those penitentiaries is satisfactory; but the employment of the convicts in departments of mechanical industry which bring their fabrics into competition with those of citizens, is a subject of complaint so general and so just, that I am constrained to commend it to

your earnest consideration. Every philanthropic mind will cling to the hope, that ultimately the supremacy of the laws may be maintained, without exacting, in any case, a forfeiture of life. Nevertheless, the subject requires most cautious deliberation. The substitution of imprisonment for life would be signally unsuccessful, without such a modification of the pardoning power as might prevent its being employed except in cases where it would seem to be necessary to correct error. One hundred and ninety-seven persons have been consigned for life to the state-prisons within the last twenty-five years, all of whom were pardoned after terms averaging five years and two months, except those who escaped, thirty-two who died, of whom twenty-four did not reach that average period, and twenty-two now in prison, of whom fourteen have not yet been confined so long a term. The average of limited sentences is four years and eight months.

Although more than four thousand persons are annually confined in our county jails, those penitentiaries often exhibit scenes revolting to humanity; and many a youthful prisoner, instead of being subjected to salutary discipline, becomes more depraved. I indulge a hope that this interesting subject, so often fruitlessly submitted to the legislature, will receive your enlightened consideration.

The administration of justice has encountered many and novel difficulties. The sheriff of Albany has been obliged to call forth the armed power of his county in executing civil process; executive interposition has been invoked to suppress riotous disturbances in the counties of Rensselaer and Schenectady; unremitted efforts have failed to bring to light the perpetrators of an appalling crime in the vicinity of the city of New York; and high offenders, who had maintained respectable relations, have escaped, in some instances, after arrest. These incidents suggest inquiries whether the efficiency of the police might not be improved, and whether the number of magistrates authorized to accept bail and discharge on habeas corpus, has not been improvidently enlarged. A subject of Great Britain who, for several years, pursued a desperate enterprise of bringing on a border warfare, by crimes which caused him to be proscribed in both countries, was, with extraordinary efforts, and after irritating delays, brought to justice.

The detention of another British subject, who, having come voluntarily into the county of Niagara, was held to answer an indictment for a murder committed at Schlosser in 1837, was made a cause of complaint by the British minister to the president of the United States, on the ground that the aggression was an act of public force committed under authority of her majesty's government. The then president having decided that the subject belonged to the judicial jurisdiction of this state, and that his interposition was not required by any principle of reason, justice, or international law, and having communicated that decision to me, I expressed my acquiescence, and assured him that the supposed offender should be brought to trial and have a legal acquittal if innocent, and suffer just punishment if guilty of so aggravated a crime. The government of Great Britain soon afterward formally avowed the aggression, and reiterated the demand for the discharge of the accused. The late executive of the United States,* on this new and more formal presentation of the case, conceded that, according to the laws of nations, the prisoner could not be held responsible for his supposed participation in the aggression. The president further declared, that he would direct the prosecution to be discontinued, if it were pending in a federal court, and intimated to me, that if for want of power or other cause, I should decline to enter a nolle prosequi, the general government would provide counsel for the accused, and suggest a removal of the proceedings into the supreme court at Washington, if a conviction should occur. These views were also adopted by the present chief-magistrate of the United States.† After due consideration I informed the president that now, as before, the subject seemed to me to belong to the judicial tribunals of this state, and submitted that their proceedings ought not to be embarrassed by any interposition of either the federal or state authorities. The accused appeared on habeas corpus before the supreme court and challenged its jurisdiction, upon the grounds maintained by Great Britain and conceded by the executive of the United States; but the plea was overruled, and the prisoner having been remanded, was tried in Oneida county in September last, and having proved an alibi, was acquitted. Interesting as a capital trial, especially necessary to maintain the dignity of the state, the case had acquired additional importance

* General Harrison. † John Tyler.

from the grave questions of constitutional and international law which it involved. It became a subject of legislative debate in London and Washington, as well as in our own capitol, and popular feeling was intensely stimulated on both sides of the Atlantic. Thus a trial for felony seemed likely to involve in war two enlightened Christian nations, which had every motive to perpetuate peace and friendship. Agents of the Canadian authorities, and credulous persons among ourselves, alarmed the national executive and the representative of the British government, with reports of imaginary conspiracies to convict the accused by perjured testimony, and to render war inevitable by his assassination in prison. During these proceedings my action was guided by a desire to maintain—but not without proper deference to the government of the United States—the judicial jurisdiction of this state—to conduct the prosecution with energy, but with fairness toward the accused—to preserve order, and not merely to prevent any unlawful violence against the prisoner, but also to manifest a jealous care of the public honor in that respect—to sustain the government of the United States in demanding redress for the aggression at Schlosser as a national indignity, and to co-operate in the execution of all necessary measures for public defence. The papers now submitted, together with those already before the legislature, will furnish a full history of these interesting events. Your authority is necessary for paying some expenses attending them, for which no provision was found in existing laws.

New York, like her sister states, and not less assiduously than they, pursues a policy of material improvement, commercial enterprise and virtuous refinement, to meliorate her social condition and recommend republican institutions to the favor of mankind. She deprecates war, therefore; and especially would she avoid incurring its calamities, for objects or from motives peculiar to herself. But recent occurrences admonish us, that pacific interests and dispositions are not always a guaranty of safety and peace. Although the American government rigidly observes neutrality, and especially so where British interests are involved, yet this is far from satisfying a distant monarchy that retains provincial colonies under the shadow of our republican institutions. It has not been enough that a military force was maintained to prevent our citizens from furnishing aid and supplies to

discontented subjects of those colonies, but the irrepressible sympathies of a free people have manifestly given offence. Although the misguided Americans who joined the standard of Canadian insurrection, were abandoned to the vengeance they provoked, yet the government of Great Britain denies our right to try its subjects who, having in time of peace committed crimes in this state, afterward come voluntarily within our jurisdiction. It is not enough that in such cases we award justice according to the principles, and in the forms of English jurisprudence, but we are expected to vary our constitutional distribution of judicial powers. We have experienced the inequality of diplomacy between a peace-loving and defenceless nation, and one that is belligerent and everywhere prepared for conflict; and it is to be hoped, that hereafter, and at least so long as questions affecting the integrity of our territory, the inviolability of our flag, and the honor of our country, remain unadjusted, the government of the United States will steadily persevere in the defensive policy it has so vigorously commenced. Having represented to the president, that the British government had established a naval armament upon the lakes adjoining this state, sufficient to sweep our unprotected commerce from those waters, I have much satisfaction in acknowledging the promptness with which he directed the adoption of an adequate system of defence.

It is a gratifying indication of the patriotism of our citizens, that notwithstanding the diminution of the penalties for omissions of military duty, the efficient militia force has not materially decreased, while a just impatience for a reform of the system is everywhere expressed.

Agricultural associations have been formed under the auspices of the State Agricultural Society and the patronage of the legislature, in the counties of Albany, Cayuga, Columbia, Cortland, Delaware, Dutchess, Genesee, Greene, Jefferson, Kings, Livingston, Madison, Montgomery, Niagara, Oneida, Onondaga, Orleans, Otsego, Rensselaer, Saratoga, Seneca, St. Lawrence, Suffolk, Tioga, Tompkins, Washington, Wayne, Yates, Monroe, Orange, and Fulton and Hamilton; and I commend to your favorable consideration the appeals that will be made for more liberal encouragement of the arts of husbandry.

The praiseworthy efforts of the agent of the stateprison at

Auburn to introduce the manufacture of silk in the workhouses of that institution, have not been altogether unsuccessful. Citizens in the counties of Monroe, Genesee, Tompkins, Cayuga, Jefferson, Dutchess, Tioga, Wyoming, Niagara, Suffolk, Otsego, Orange, Lewis, Erie, and Yates, have responded to the desire of the legislature to engraft the production of silk upon our agriculture, and the sum of nine hundred and sixty-four dollars has been paid by way of bounty for that object. It is worthy of remark, that this very productive branch of industry has never flourished in any country without first enjoying some such especial favor. England was repaid (by the introduction of the silk manufacture) for religious tolerance toward exiled French artisans; France acquired it by munificent patronage of Italian manufacturers; and China received from Italy a large tribute until the culture in the latter country became an object of imperial protection. The necessity for revising the revenue laws occurs under circumstances so propitious to the establishment of a system which would not only encourage this important object, but which would also stimulate agriculture generally and revive the manufacturing interests, that I hope you may think it proper to instruct our representatives in Congress concerning the views and wishes of the people of this state on that deeply interesting question.*

The Literature Fund, devoted to the improvement of the higher branches of learning in colleges and academies, has a capital of $268,990, and including what is received from the United States deposites, an income of $47,165. The value of the endowments of our colleges and academies is $2,175,731. The productive capital of the Common School Fund is $2,036,625, and its whole income is $261,073. If we should include lands valued at $200,000, and so much of the United States deposite moneys as yield revenue to this fund, its value would be $5,819,959. There are 10,886 school district libraries, containing 630,000 volumes. The whole capital permanently invested for the support of education, including the two funds, the endowments of colleges and the value of school edifices, is ten and a half millions of dollars. There is a happy contrast between this munificent foundation,

* The experiment of manufacturing silk in the stateprison was subsequently abandoned without a thorough trial.—*Ed.*

and a resolution of the colonial assembly not long before the Revolution, declaring that a report that they intended to levy by tax five hundred pounds, to be expended in the promotion of learning, was groundless, false, and malicious.

It was among my earliest duties to bring to the notice of the legislature the neglected condition of many thousand children, including a very large proportion of those of immigrant parentage in our great commercial city; a misfortune then supposed to result from groundless prejudices and omissions of parental duty. Especially desirous, at the same time, not to disturb in any manner the public schools which seemed to be efficiently conducted, although so many for whom they were established were unwilling to receive their instructions, I suggested, as I thought, in a spirit not inharmonious with our civil and religious institutions, that, if necessary, it might be expedient to bring those so excluded from such privileges into schools rendered especially attractive by the sympathies of those to whom the task of instruction should be confided. It has since been discovered that the magnitude of the evil was not fully known, and that its causes were very imperfectly understood. It will be shown you in the proper report, that twenty thousand children in the city of New York, of suitable age, are not at all instructed in any of the public schools, while the whole number in all the residue of the state, not taught in common schools, does not exceed nine thousand. What had been regarded as individual, occasional, and accidental prejudices, have proved to be opinions pervading a large mass, including at least one religious communion equally with all others entitled to civil tolerance—opinions cherished through a period of sixteen years, and ripened into a permanent conscientious distrust of the impartiality of the education given in the public schools. This distrust has been rendered still deeper, and more alienating, by a subversion of precious civil rights of those whose consciences are thus offended.

Happily in this, as in other instances, the evil is discovered to have had its origin no deeper than in a departure from the equality of general laws. In our general system of common schools, trustees chosen by tax-paying citizens, levy taxes, build school-houses, employ and pay teachers, and govern schools which are subject to visitation by similarly-elected inspectors, who certify the qualifications of teachers; and all schools thus consti-

tuted participate in just proportion in the public moneys, which are conveyed to them by commissioners also elected by the people. Such schools are found distributed in average spaces of two and a half square miles throughout the inhabited portions of the state, and yet neither popular discontent, nor political strife, nor sectarian discord, has ever disturbed their peaceful instructions or impaired their eminent usefulness. In the public-school system of the city, one hundred persons are trustees and inspectors, and, by continued consent of the common council, are the dispensers of an annual average sum of $35,000, received from the Common School Fund of the state, and also of a sum equal to $95,000, derived from an undiscriminating tax upon the real and personal estates of the city. They build school-houses chiefly with public funds, and appoint and remove teachers, fix their compensation, and prescribe the moral, intellectual, and religious instruction which one eighth of the rising generation of the state shall be required to receive. Their powers, more effective and far-reaching than are exercised by the municipality of the city, are not derived from the community whose children are educated and whose property is taxed, nor even from the state, which is so great an almoner, and whose welfare is so deeply concerned, but from an incorporated and perpetual association, which grants, upon pecuniary subscription, the privileges even of life-membership, and yet holds in fee simple the public-school edifices, valued at eight hundred thousand dollars. Lest there might be too much responsibility, even to the association, that body can elect only one half of the trustees, and those thus selected appoint their fifty associates. The philanthropy and patriotism of the present managers of the public schools, and their efficiency in imparting instruction, are cheerfully and gratefully admitted. Nor is it necessary to maintain that agents thus selected will become unfaithful, or that a system that so jealously excludes popular interference must necessarily be unequal in its operation. It is only insisted that the institution, after a fair and sufficient trial, has failed to gain that broad confidence reposed in the general system of the state, and indispensable to every scheme of universal education. No plan for that purpose can be defended, except on the ground that public instruction is one of the responsibilities of the government. It is, therefore, a manifest legislative duty to correct errors and defects in whatever

system is established. In the present case, the failure amounts virtually to an exclusion of all the children thus withheld. I can not overcome my regret, that every suggestion of amendment encounters so much opposition from those who defend the public-school system of the metropolis, as to show, that in their judgment it can admit of no modification, neither from tenderness to the consciences, nor from regard to the civil rights of those aggrieved, nor even for the reclamation of those for whose culture the state has so munificently provided; as if society must conform itself to the public schools, instead of the public schools adapting themselves to the exigencies of society. The late eminent superintendent, after exposing the greatness of this public misfortune, and tracing it to the discrepancy between the local and general systems, suggested a remedy, which, although it is not urged to the exclusion of any other, seems to deserve dispassionate consideration. I submit, therefore, with entire willingness to approve whatever adequate remedy you may propose, the expediency of restoring to the people of the city of New York—what I am sure the people of no other part of the state would, upon any consideration, relinquish—the education of their children. For this purpose, it is only necessary to vest the control of the common schools in a board to be composed of commissioners elected by the people; which board shall apportion the school moneys among all the schools, including those now existing, which shall be organized and conducted in conformity to its general regulations and the laws of the state, in the proportion of the number of pupils instructed. It is not left doubtful that the restoration, to the common schools of this city, of this simple and equal feature of the common schools of the state, would remove every complaint, and bring into the seminaries the offspring of want and misfortune, presented by a grand jury, on a recent occasion, as neglected children of both sexes, who are found in hordes upon the wharves and on corners of the streets, surrounded by evil associations, disturbing the public peace, committing petty depredations, and going from bad to worse, until their course terminates in high crimes and infamy.

This proposition, to gather the young from the streets and wharves into the nurseries which the state, solicitous for her security against ignorance, has prepared for them, has sometimes been treated as a device to appropriate the school fund to the

endowment of seminaries for teaching languages and faiths, thus to perpetuate the prejudices it seeks to remove; sometimes as a scheme for dividing that precious fund among a hundred jarring sects, and thus increasing the religious animosities it strives to heal; and sometimes as a plan to subvert the prevailing religion and introduce one repugnant to the consciences of our fellow-citizens; while in truth, it simply proposes, by enlightening equally the minds of all, to enable them to detect error wherever it may exist, and to reduce uncongenial masses into one intelligent, virtuous, harmonious and happy people. Being now relieved from all such misconceptions, it presents the questions whether it is wiser and more humane to educate the offspring of the poor, than to leave them to grow up in ignorance and vice; whether juvenile vice is more easily eradicated by the court of sessions than by common schools; whether parents have a right to be heard concerning the instruction and instructors of their children, and tax-payers in relation to the expenditure of public funds; whether, in a republican government, it is necessary to interpose an independent corporation between the people and the schoolmaster, and whether it is wise and just to disfranchise an entire community of all control over public education, rather than suffer a part to be represented in proportion to its numbers and contributions. Since such considerations are now involved, what has hitherto been discussed as a question of benevolence and of universal education, has become one of equal civil rights, religious tolerance, and liberty of conscience. We could bear with us, in our retirement from public service, no recollection more worthy of being cherished through life, than that of having met such a question in the generous and confiding spirit of our institutions, and of having decided it upon the immutable principles on which they are based.

The condition of the treasury will be fully presented by a report from the proper officer. The revenues from every source exhibit a prosperous increase. The amount derived from auction duties was $206,702, being an increase of $42,080 over the corresponding revenues in the previous fiscal year. The amount received by the superintendent for duties on the manufacture of salt, was $194,216, being more than was received in the previous year by $36,030. The manufacture of salt, and consequently the revenue,

have been improved by allowing drawbacks upon our salt reaching distant markets. I suggest an inquiry into the expediency of reducing still lower the duty upon the manufacture, with a view to an improvement of the revenue and under a belief that such a measure would secure a market for our salt in the valley of the Mississippi. The superintendent renews his complaint of the unskilful process used in manufacturing fine salt, and suggests efforts for discovering a corrective. Confident anticipations of reviving the manufacture at Montezuma are expressed.

Although the harvests were less abundant than heretofore, and there has been a considerable diversion of western trade through the valley of the St. Lawrence, the tolls upon each of the canals exhibit a gratifying increase. The income from all during the season of navigation, was $2,034,878, exceeding the tolls in the previous year by $259,131, equal to $14\frac{59}{100}$ per cent. The tolls in 1831 were $1,223,801.

The Canajoharie and Catskill Railroad Company, and the Ithaca and Owego Railroad Company, having failed in July and October last to pay the interest on the stocks issued in their behalf, under laws passed in 1838 and 1840, the amount of that interest, equal to $11,405 was paid at the treasury. Proceedings of foreclosure have been instituted. A portion of the Canajoharie and Catskill railroad has been made, but I regret that there is not a probability of its completion under present circumstances. The Ithaca and Owego railroad is somewhat productive, and its profits will be much enhanced when it shall be brought into use as a connection of the New York and Erie railroad with our large inland lakes, the Erie canal, and the central railroads.

The revenue of all the canals during the fiscal year, after deducting only the expenses of collection and ordinary repairs, was $1,551,098. The permanent public debt, at the close of the last fiscal year, exclusively of temporary loans, contingent liabilities, and the balance of the Erie and Champlain canal debt, for the payment of which equivalent funds are set apart, was $15,540,530, to which must be added temporary loans amounting to $1,855,000, making the aggregate debt $17,395,530, and the interest annually payable thereon, including also interest on the stocks loaned to the railroad companies which are in default, is $919,704. The debts consist of stocks chiefly redeemable in 1845, 1850, 1855, and 1860. The amount of stocks issued to the Delaware and

Hudson Canal Company, and railroad companies, is $5,035,700. You will, of course, give immediate attention to proper measures for reimbursing temporary loans.

The Auburn and Rochester railroad, and the Albany and West-Stockbridge railroad, have been brought into successful operation. A further portion of the Long Island railroad, a new section of the Genesee Valley canal, and the eastern section of the New York and Erie railroad, have been opened. Our railway communications having thus been extended one hundred and sixty miles, their aggregate length is seven hundred and forty-seven miles. Our canal navigation has also been increased by an addition of fifteen miles. Its total length is eight hundred and three miles. Enlightened citizens of this state and of Pennsylvania have opened a prosperous exchange of gypsum, salt, coal, and iron, by the Chemung canal, and by the Ithaca and Owego railroad, while the enterprise of citizens of Albany and Boston has connected our interior communications with those of the eastern states, consisting of one hundred and fifty-two miles of canals, and eight hundred miles of railways, opening to us facilities for social intercourse with the people of those prosperous communities, and convenient access to their manufactories, quarries, seaports and fisheries. There is reason to expect that the continuous line now reaching from Boston four hundred and eighty-three miles to Batavia, will, in another year, be extended to Buffalo. So obviously do the growing relations between New York and the states around her, contribute to the general prosperity, that we can not but indulge a hope that more distant communities, with which we are equally allied, will not find themselves ultimately constrained by fear of exposure of their peculiar institutions, or other causes, to adopt, in regard to us, such an opposite policy of annoyance and alienation, as they seem now to apprehend, may be necessary.

The progress of civilization is always indicated by the condition of those interior communications, by means of which political and social relations are formed, supplies exchanged, and defence established. Internal improvement is only an improvement of such facilities; and manifestly includes not less, at an advanced stage of a country, the construction of railways between important positions for commerce or defence, and of artificial channels between navigable waters, than, at earlier periods, an extension

of common roads. The beneficent results of such improvement, present themselves on every side; and yet our facilities of communication are incomplete and insufficient. To render them more perfect, so as to increase their usefulness, and to extend them into regions partially or wholly denied their benefits, and thus to remove inequalities of local advantage, and to produce harmony and mutual affection, is our established policy. While it invades no rights, and promotes the convenience of all, it visits with peculiar beneficence citizens of humble circumstances and assiduous industry, indirectly augmenting and actively distributing capital, diminishing the necessity for its use, and reducing the cost of subsistence and exchange, and at the same time bringing leisure and facilities for intellectual enjoyment, and permitting all, instead of the few to go abroad on errands of inquiry, interest, duty, and affection. It is thus that internal improvement contributes to ameliorate the condition of society, and to establish the sway of democratic power. Although it has been supposed presumptuous and irreverent to disturb natural monuments, and divert tributary streams,* better opinions now prevail, and there is much reason for believing that we can not more acceptably manifest a becoming sense of the beneficence with which our lot has been cast, than by improving, with benevolent purposes, to the greatest extent, resources and advantages permitted to be enjoyed only by means of efforts conducive to our own happiness.

But the opposition which this policy encounters, relies now not so much on abstract principles, as on objections against particular enterprises and customary forms of prosecuting them. Unfortunately, however, those who object to a direct engagement of the state in such undertakings—those who maintain that corporations ought not to be intrusted with them—those who deem it wrong for the state to give or lend aid to such associations—those who object to spending revenues, held for the general benefit, in constructing roads and canals—those who deny the right of government to create debt for such purposes, or the expediency of such a mode of finance—and those who maintain that taxation ought always to be resorted to when improvements are undertaken, do not agree, nor consider it important to agree, upon any fiscal scheme; while justice to our predecessors, whose projects

* See Report of Hon. Samuel Young.—*Ed.*

it belongs to us to execute, requires us to remember, that there has never been a railroad, nor a canal, the feasibility, or the usefulness of which, was not, in its early stages, sincerely and vehemently questioned.

It was well anticipated in 1835, that within a short period, perhaps not exceeding ten years, the business upon the Erie canal would surpass its capacity; and that navigation could not be maintained, even during that time, without new locks, aqueducts, and other structures. The legislature, therefore, directed an enlargement, referring the dimensions of the new channel to the canal board, who adopted a scale, which, although heretofore much questioned, is no longer a subject of controversy. In 1836, the canal commissioners estimated the cost of the enterprise at about twelve and a half millions. It was prosecuted until 1838 with the use of the surplus revenues of the canals, and at a rate which would have delayed its completion at least until 1860. The legislature in 1838 directed the commissioners to make contracts with a view to the entire enlargement. The then commissioners executed this law by entering into contracts, pledging the treasury to pay sums equal to $12,477,336, all of which, except $579,204, was made payable before May, 1842: The same officers in 1839 raised their estimates of the aggregate cost of the enterprise to about twenty-three and a half millions, equal to almost one hundred per cent.; and thereupon, in a season of extreme pecuniary pressure, the public mind received such a shock from a disclosure of the extent of the engagements of the state as to prevent any appropriation, although the then commissioners showed a necessity for $4,200,000 within that year. In 1840 there were devoted to the work, besides the surplus tolls, $2,500,000, and in 1841, $2,150,000. There were paid prior to 1839, $1,884,537, and from that period until the close of the last fiscal year, $8,126,608. The aggregate sum for which the present commissioners had pledged the treasury at the close of the last fiscal year for this work, was $340,093; and since that time, contracts have been made for about $785,000. Besides the moneys already appropriated, $11,830,000 would be required within three years to execute the work with the rapidity proposed in 1839, by the then commissioners, or within four years, continuing the present retarded progress. Adhering from deeply-cherished convictions to the policy of internal improvement in

every change of circumstances, so long as the blessings of peace remain — content to adhere most earnestly when support is most needed, and least of all desirous of being understood to doubt the expediency of the most vigorous prosecution of the enlargement — I have explained its origin and progress, with no other view, than to relieve it from prevailing misapprehensions, and to invoke in its behalf, in an important crisis, a return of the general confidence it obtained in its inception. The necessity for its completion is urgent. The original structures which remain, are hastening to decay, and threaten a serious embarrassment, if not a suspension of navigation. Thirty thousand, three hundred and twenty boats passed one of the eastern locks during the last year, being an increase of three thousand, three hundred and thirty-three, or twelve and one third per cent., and showing an average passage of one boat in every period of ten and a half minutes. The voyage from Buffalo to Albany is already protracted thirty-six hours by unavoidable detention at the locks, and the inconvenience increases annually with the greater number of vessels. If we suppose the capacity of the canal would be exhausted by an average passage of a boat in six minutes, that event would happen according to the present increase of trade in 1846. The obstructions on the section between Frankfort and Syracuse, render a completion of its enlargement immediately necessary, while a depression of the surface of Lake Erie excites apprehensions of a suspension of navigation from the Niagara to the Seneca river, one hundred and fifty-five miles, unless the channel be deepened from Black-Rock to Lockport, twenty-seven miles.

Unless we adopt a new financial policy, a suspension of the enterprise would involve a discontinuance of all other public works, because the state relies upon the increasing canal revenues to prosecute those undertakings; and the discontinuance of all, would at once convert the existing debts into a dead weight, depending for its removal on the revenues of a dilapidated and obstructed canal, with a diminishing trade. On the contrary, when the canal shall have been enlarged, we can, if necessary, while affording greater facilities, permanently raise the tolls twenty per cent., which, assuming the continuance of the present increase of trade, would, in 1852, secure us an annual revenue of $3,892,000.

The operations of improvement have connected themselves

with the general business of the country, and they affect the prices of subsistence and the value of labor and land. Ten thousand laborers are employed, not to speak of those engaged in furnishing subsistence; and the moneys expended constitute an important part of the circulating medium. A violation of contracts would draw after it aggravated damages; moneys paid for such damages would never find an equitable distribution among the many aggrieved persons not in communication with the government; capital would be suddenly diverted from its customary uses; the laborer would go for a time unemployed; want would meet us on every side; the public mind would be agitated; and the financial interests of the state as well as the general business of the country, would suffer deeply during a conflict between efforts to persevere in an ill-conceived scheme of retrenchment, and convulsive struggles to restore the policy which hitherto has been attended with unexampled benefits.

The Erie canal was designed not merely to facilitate the domestic exchange of productions and fabrics, nor exclusively as a tributary to the treasury, but also to divert to the bay of New York the trade of distant interior regions, and thus to secure to the state the political influence and social advantages of an extensive commerce. The competition was begun, not only in advance of a full exhibition of the prize, but before the resources of our competitors were developed. The sagacious minds which conceived the enterprise, never forgot, as we sometimes do, that ship navigation might be grasped six hundred miles up the St. Lawrence, and extended, at no disproportionate expense, by passages around the rapids of that river, the falls of Niagara, and the Sault St. Marie, two thousand five hundred miles. They knew that a canal only four feet deep would be quite too shallow a channel for the purposes contemplated, and they deplored the necessity which prescribed its inadequate dimensions; but they consoled themselves with a confident hope that another generation, enriched even by such a beginning, would not want magnanimity to perfect the enterprise. We compete with Canadian efforts, not only under the disadvantage of an increased distance from Lake Erie, by the way of our canal to European markets, but also under the effect of discriminating privileges in English ports to colonial shipments, exceeding what we could offer by even a free navigation of that channel. The Canadian authorities, hav-

ing already made a ship canal around the falls of Niagara, and having thus overcome the chief obstacle of the northern outlet of western trade, are pressing onward with energies derived from a reorganization of their political institutions, and sustained by the favor of the imperial government.

If, therefore, we would preserve the inestimable benefits of inland navigation which we now enjoy, if we would save the treasury from embarrassment, if we desire the accomplishment of the other public works, if we would in any degree extend our interior communications, if we would maintain the public faith, prevent general distress, retain our commercial precedence and political influence, and guard against the dismemberment of our territory, it is necessary to complete the enlargement of the Erie canal throughout, and with all convenient diligence.

The New York and Erie railroad was at first estimated to cost six millions of dollars; but the subsequent adoption of a plan securing greater durability and usefulness, will, with other causes, raise the expense to above nine millions. The legislature, in 1836, appropriated to the improvement a loan of public credit for three millions, but the conditions of the act being impracticable, the work was suspended until the law was modified in 1840, since which period the enterprise has been vigorously prosecuted. Contracts have been made for constructing the unfinished part of the road, except a section of forty miles between Deposit and Binghamton. Portions, 232 miles in length, will be ready for a superstructure in the present month. A sum exceeding four millions of dollars has been expended, of which $2,800,000 was derived from the state loan. If prosecuted with the same energy as during the last year, the road will be completed in 1843.* Too deeply indebted to the people to cherish any local partialities or prejudices, I can not withhold an expression of my satisfaction, that this enterprise is attaining its true rank, as second only among the physical improvements of New York and of the Union. Regarded at first as a rival of the Erie canal and of the central roads—and as a pioneer of railways, seeking aid while the general feasibility and usefulness of such communications were yet in question—proposing to open a way through a thinly-inhabited region, which, as was believed, pre-

* It was completed in 1851.

sented obstacles insurmountable even by modern skill, and whose condition contrasted unhappily with the prosperity of parts of the state earlier visited by public enterprise—this great project, doomed as it was by the legislature to rely upon private capital alone, and then denounced for the insufficiency of that support, has been especially subjected to the distrust and opposition which it is the fate of all meliorating enterprises to encounter. The auspicious results of the partial completion of the work, exceed alike the early expectations of its advocates, and all our experience of railways. It conveys daily, with regularity, through those passes once deemed so formidable, numerous passengers, at an average fare of less than two cents per mile, and agricultural productions, merchandise, and fabrics, at rates proportionably reduced; and in its very beginning, like the Erie canal, gives pledges of a speedy reimbursement of its cost, and guaranties, if there be wisdom in the public councils, a wider diffusion of the benefits of improvement than has been before conceived. I recommend its vigorous prosecution, upon the same general considerations which have been urged for completing the enlargement of the Erie canal. The question, however, involves an inquiry concerning the most suitable manner of promoting that object.

A governmental management of railroads would be an experiment here, and it is supposed to have been unsuccessful elsewhere; although it is not obvious why, with diligence, skill, and experience, equal to what are employed in managing the canals, a system of supervision of railroads could not be adopted. There is much force in the argument, that it would increase central influence; yet, it is not clear that the influence of corporations would be more harmless, and there is much reason to believe that the more speedy diffusion of intelligence will neutralize such influence in either form. Railways, like other property, can not be obtained by the public more than by individuals, without cost. Until the investment becomes productive, that cost must be paid out of present revenues, or loans, or taxes; while resort should be had to neither of these, except to obtain adequate public benefits. But capitalists select the projects which are most feasible, and promise most speedy returns; while there is a class of even more extensively useful improvements, the magnitude of which surpasses the capacity of such associations. Such are the Erie canal and the New York and Erie railroad; and as a whole, such

would be a central line of railways from New York to Lake Erie, through the valley of the Hudson and of the Mohawk. To wait for individual enterprise to accomplish such improvements, is to delay them for a subsequent, perhaps remote, generation. The state may well claim a right to make or improve highways, and whatever profits she permits to be exacted, for their use when so constructed. The public welfare requires that the rates of toll shall be always kept as low as possible. But all associations have a disposition to increase more and more their gains, and consult less and less the public convenience; whereas agents, directly responsible to the people, are obliged to consult the general welfare diligently and constantly. Surely no one can suppose, that the vast amount of private capital invested in railroads in the United States is unproductive. On the contrary, although there are many injudicious and incomplete works of that kind, the whole combined, yield returns, and every year increases their productiveness. If observations, made with some care, are not altogether inaccurate, time will soon disclose the gratifying truth, that in this state a judicious system of railways, with proper branches and extensions penetrating every district, reaching every resource, and affording facilities for travel and transportation, with rates of toll not considerably exceeding those of steamboat or canal navigation, would, as one entire system, yield an adequate net revenue. This will indeed be apparent, if we consider the great economy of time and money resulting from such improvements, or even if we remember that private capital is seldom gratuitously devoted to the public good. We are, therefore, near the time when conflicting interests and local jealousies concerning internal improvement, will cease, because the more the system shall have been extended the greater will be the facility of extension. No abrupt change of policy is necessary, however, to reach such a result, if it be attainable. When we remember that the first iron rail in this state was laid only ten years ago; that we now have eight hundred miles of railways; that during a period of pecuniary pressure, an average of ninety miles is annually added to the chain, and that a longer extent is in progress at the close than in the beginning of every year, we shall be convinced that, even as we now proceed, we are approaching to the result indicated. I advise, therefore, no unnecessary departure from that system at this time; but, I respect-

fully recommend, that all such improvements be henceforth regarded rather as parts of the general system of interior communications, designed to promote the general welfare, than as mere investments for gain; that a careful supervision of all such roads be established, to ascertain the accommodations afforded to the public, the fares received, and the profits realized; and that the right of resumption stipulated in charters, shall be, as hitherto, carefully preserved. The legislature would thus always be enabled to decide in regard to each road, whether the public good required interposition by way of regulation or resumption. Entertaining such opinions, and especially applying them to the New York and Erie railroad, but with none other than feelings of respect for the benefactors under whose auspices it has thus far been prosecuted through so many and great embarrassments, I shall cheerfully approve any mode for continuing the enterprise, that shall seem to the legislature expedient, assuming of course that the measure will involve no unnecessary public sacrifice.

The Genesee Valley canal was undertaken in 1836. Its cost, then estimated at near two millions, was subsequently raised to about five millions. The Black River canal was commenced at the same time, upon an estimate of about one million, but which was afterward advanced to two millions. Loans for these improvements, amounting to $2,800,000, were authorized previously to 1839, and like loans for $1,600,000, since that time. Although it might be conceded that these enterprises would have been delayed, if their real cost had been correctly understood, or if the subsequent embarrassments of the country had been foreseen, yet when the condition of the works, their destined connection with navigable waters, penetrating remote recesses of the country, and their ultimate usefulness, are considered, together with the injurious consequences which would result from abandoning such undertakings, I am sure that nothing but an inflexible necessity, not yet apparent, will induce your consent to a measure so widely injurious.

Nor can I omit to invite your attention to two suggestions of improvement yet unattempted. A railway from the St. Lawrence to Lake Champlain, and ultimately to be extended to tide water, is manifestly required as a preparation for public defence — to develop the rich mineral resources of the border counties — to

retain the trade of Lake Ontario—and to counteract the efforts of the Canadian government to guide the travel and trade of those counties, and of the far west, down the valley of the St. Lawrence. The delay of the undertaking exhibits a presumptuous confidence in our ability to retain, without effort, advantages which it should be remembered are altogether acquired. The other proposed improvement, would be a similar communication between the city of New York and the central points of our northern, eastern, and western trade. The enlightened citizens of Massachusetts have constructed a railway to invite to her flourishing capital the winter trade, which our metropolis seems so much to undervalue; and that enterprise is sure, under existing circumstances, to divert a portion of the trade during all seasons. There is undoubtedly abundant capital in the city of New York, and sufficient zeal for its welfare, to induce an accomplishment of the proposed communication; but if, for any cause, that city should remain unmoved by rivalry so close, it may be wise to consider whether the inhabitants of our interior districts can longer submit to a periodical exclusion from its warehouses and wharves, and whether they will permit their commercial emporium to be deprived of any of the advantages it has already derived from the enlightened policy of the state.

The estimated cost of all the public works in progress, including two thirds of the expense of the New York and Erie railroad, such being the proportion in which the state has contributed to that enterprise, is $36,598,379, of which sum it yet remains for the legislature to provide $17,265,130. Large as this sum is, there is no reason to suppose that it surpasses our fiscal ability. It is true that the state owes a debt, including temporary loans, of seventeen millions; but it is not in any form a dead weight, like public debts contracted in war, or for improvident expenditures. It has been created in constructing a system of works, which not only is to yield a return when finished, but which is so productive in every stage, that its profits furnish all the means necessary for its completion, without exacting a dollar from land, labor, or any other resource; a system which leaves nothing to speculation concerning its adequacy to pay the interest on its cost, because it pays interest in advance, nor concerning the reimbursement of the cost itself, because the surplus profits over the annual interest are adequate to procure the further sum

required, and would at any time, when so applied, insure a rapid extinguishment of the principal. The debt is large because the enterprise is great. It remains for you to decide whether the indebtedness shall be made larger, or whether you will devise a different system of finance; but if the present system and progress are continued, the entire enterprise will be accomplished in 1846. The treasury will be relieved of all pressure from the railroad indebtedness. The expenditures may cease, and the canal revenues, now exclusively applied to that purpose, will extinguish the debt incurred in their construction within fifteen years thereafter; after which these great public works will continue to pour into the treasury a river of tribute. For what conceivable purpose should we be induced to divert those revenues from so useful, so important a destination? Abundant provision has been made for all the interest upon existing debts, for the civil list, for the administration of justice, for the endowment of education, and for public alms in every form that philanthropy and Christian benevolence suggest.

Since the last adjournment of the legislature, the public wealth has been augmented by a virtual restoration to the state of its share of the national domain.* This estate, of which the national government is now our trustee, consists of lands five times exceeding the territory we possess, and exceeding the surface of the islands of Great Britain. Even in the present season of extreme depression, it yields an annual revenue of about $200,000, which must continue to increase at least throughout the present century. Internal improvement is for ever, as now, to constitute the defence and ornament of the state; and it will be an interesting fact in the history of that policy, that its severest trial was coincident with the triumphant practical demonstration of the safety and usefulness of the system, and with so vast an augmentation of the public wealth. Beyond all these resources, moreover, there is another to which we need never resort for internal improvements, but a reference to which should be sufficient to dispel any lingering doubt of the fiscal ability of the state—the untaxed wealth of the people, equal to seven hundred millions of dollars. Former periods and other states are often brought into favorable

* The law here referred to was repealed under the administration of President Tyler, before any action was had under it.—*Ed.*

contrast with our present condition; whereas a moment's reflection will convince us that the state was never so truly rich as at the present time; nor would it be an unprofitable inquiry, whether, in ancient or modern times, there have existed two and a half millions of people so eminently blessed with the means of physical, moral, and social improvement.

But, notwithstanding these resources, the prosecution of the public works is embarrassed. It is, however, the fortune of enterprise—it is essential to enterprise—it is enterprise itself, to encounter embarrassments; and there is no merit in success which is obtained without effort and involves no sacrifice. The present emergency will, nevertheless, be found to exact no extraordinary energy or patriotism.

Since the works were undertaken, the rate of interest demanded upon loans to the state has advanced from five to about seven per cent. Prudence, under these circumstances, counsels moderation; yet the value of money has not increased as much as the prices of labor and subsistence have fallen; and it would certainly be the worst of all economy to discontinue enterprises so important for a reason so inadequate, or to sacrifice, in delays and damages, more than the additional cost resulting from the enhanced rate of interest. While we ought, therefore, to pursue the undertakings cautiously and even at some apparent although unreal sacrifice, we are, nevertheless, required to put forth every effort to restore our public stocks to their former value. Such efforts, however, would prove unavailing, if the causes of the evil were misunderstood. We are in competition with other states and countries in borrowing money. The securities of other nations are not depreciated, while those of our sister-states, whether they owe less or more, are reduced, none less than our own, and some 30, 40, 50, 60 and 70, and even 80 per cent. The federal government, which has once paid absolutely a debt of $189,000,000, and which now owes nothing, is unable, at the same rate of interest we offer, to obtain a loan for three years, of an amount equal to only half a year's revenues. Is it true, then, that the depreciation of our stocks has resulted from the greatness of our debt, or from the magnitude of our undertakings, or from any fiscal unsoundness or error? On the contrary, it is apparent that our stocks are depressed by some general cause affecting all American governmental securities. Some of the states have,

with youthful imprudence, embarked, without proper fiscal systems, in great enterprises, which seemed to us, as well as to themselves, feasible and not disproportionate to their ability. A commercial revulsion has overtaken them before their works could be completed and rendered productive. Supplies of capital have ceased — the works remain unfinished — the states fail to pay interest punctually; and, since punctuality is the life of credit, their credit is expiring.

This error of the states has been aggravated by other circumstances. To retrieve losses, they plead a failure of consideration or want of authority on the part of their agents, or other excuse, against bonds bearing all the forms of guaranties of public faith, and for which the authorities received, and applied to public uses, sums deemed equivalent. It is known throughout the world, and to none better than to capitalists, that the people here exercise absolute control over legislation, and it is doubted whether they will have the virtue to maintain public credit under the inconvenience of taxation. When we ourselves admit such apprehensions, can we be surprised that they should be entertained in countries where it is a maxim that mankind must be governed by fraud or force? It results from the intimacy of our federation, and from the uniformity of our institutions, and of the policy, character, principles, and interests of the people, that hesitation by one state brings distrust upon all. Another question, of broader scope and even more painful interest, follows closely upon that which relates to maintaining the public faith. Can governments continue to exist that put justice at defiance and trample upon sacred obligations? How shall they collect revenues and enforce the payment of duties, taxes, and claims? how conduct affairs, exact obedience, preserve order, and execute municipal justice? and how can they protect themselves against injustice and aggression from abroad? Such is the ordeal through which American credit is passing; and it retains, and can retain, only the confidence of those who, notwithstanding all unfavorable indications, believe in an ultimate payment of the principal and interest of the debts of the states, in the virtue of the people, and in the permanence of republican institutions.

Regarding the crisis as one calling for a sacrifice of all party differences, I might concede that misapprehensions, which in

themselves would be harmless, may now be injuriously affecting the credit of this state, since they combine with causes operating thus injuriously. Nevertheless, it is evident that our efforts for restoration must, at least for a time, be only partially successful, and that, even if they should be fully so, we could hope for no permanent prosperity while many of our sister-states should remain embarrassed, discredited, and dishonored. The country is falling from a career of high enterprise; and the energies, not of one, or of several, but of all the states, must be aroused to regain the course. How shall those energies be awakened, combined, and directed? The general government has seemed to me to present the only suitable and adequate agency for such a purpose. It is, therefore, observed with much satisfaction, that the executive authorities of the Union are manifesting, not merely watchfulness in regard to the public danger, but also a just and generous spirit toward the states. Whatever may have been designed, the federal constitution has been, during several years past, practically construed so as to cast upon the states the chief expense of establishing and maintaining post-roads, and facilities for carrying on inland trade and transporting arms and munitions of war, while the revenues derived from foreign commerce and from the public domain, both of which would seem to have been properly chargeable with the expense of such operations, have flowed into the national treasury.

The officers presiding over the war department and the general postoffice, very freely admit that the general government derives through their departments, from the internal improvements of the states, advantages more than equivalent to the cost of all that has been accomplished. The Union has no interests separate from those of the states; and their welfare and security are not less justly the care of the general government than of the state institutions. Since the embarrassments of the states have chiefly been incurred in improving roads, rivers, and canals, in extending education, and in laying other great foundations of national prosperity and union, it is not less just than wise, that the general government should encourage and assist, as far as the constitution may allow, any of those communities in a critical reverse, which, although brought on by the patriotic policy they have pursued, nevertheless threatens the honor if not the perpetuity of the republic. Many of the states are free from embarrassment.

This state, although with some temporary inconvenience, will triumphantly sustain herself; and most of the other members of the Union will recover fiscal prosperity by a judicious application of their newly acquired revenues, arising from the public lands. But inasmuch as the distribution law adopted the just ratio of representative population, instead of that of the extent of roads and canals to be constructed, or of debts to be paid, some of the embarrassed states may require temporary relief; and we can not, without doubting what we ourselves have achieved, distrust their ultimate ability, if enabled to complete their improvements.

But, although the causes affecting our public securities lie beyond the reach of direct efforts, we can, nevertheless, mitigate the evil and contribute to a remedy. It is an urgent duty to fortify our credit, not merely for the purpose of securing a discrimination in our favor, but also to furnish an encouraging example to our sister-states. I suggest, with a view to this purpose, a rigid adherence, under all circumstances, to the rule hitherto observed, that the whole public debt shall not be raised above such an amount as that its interest can be paid out of the current surplus revenues of the canals; and, to remove all question concerning the fiscal soundness and moral integrity of the state, I recommend that all the future revenues from the national domain shall be pledged as a sinking fund to the extinguishment of the principal of the public debts, annually paying, or providing for the payment of, a part of the principal, and absorbing first the older debts. If seventeen millions of dollars are yet required to complete our public works, the system I have suggested would, in 1855, discharge the whole of our present and future indebtedness, and after that time leave us unincumbered annual revenues. If we adopt this, or some more judicious fiscal system, if we truly value our resources and justly appreciate our enterprises, we may prosecute them diligently and firmly, and with even higher confidence in their perfect success and unbounded usefulness than has ever before been entertained. If, moreover, we declare that at no time, nor under any circumstances, can this state justify or palliate a violation of public faith by any of our sister-states, but at the same time yield to those states, in performing their obligations, our sympathy, support, and such aid as is within our constitutional province; if we stand by those

younger, less wealthy, and less powerful, but equally patriotic members of the confederacy in this crisis — as we know full well they would stand by us if menaced from abroad — we shall then see them rapidly recovering from their embarrassments, and worthily regaining the confidence of mankind. Then each star will be firmly fixed, the clouds now gathering will speedily disperse, and the constellation continue to shed its cheering light upon the way along which the nations of the earth are advancing to constitutional liberty.

MESSAGE TO THE LEGISLATURE,

SECOND SESSION, AUGUST 16, 1842.

FELLOW-CITIZENS OF THE SENATE AND ASSEMBLY:

I TRANSMIT a law of Congress which reduces the house of representatives to two hundred and twenty-three members, and the number of representatives from this state to thirty-four. Regret for the reduction of the ratio of representation will be relieved by the more perfect expression of the popular voice which will be obtained by elections in uniform single districts.

I tender you congratulations on the general prevalence of health and the abundant harvests of the year.

The edifice of the Genesee Wesleyan Seminary at Lima, a flourishing institution which has been favored with aid from the treasury, has been destroyed by fire; but private liberality, encouraged by forbearance on the part of the state, promises a speedy renewal of the usefulness of the institution.

The administration of justice has become more efficient; but I hope the importance of preventing abuses of the writ of habeas corpus and of the privilege of bail may not be overlooked, as well as the manifest necessity for more effectually securing the attendance of grand and petit jurors in courts having jurisdiction in criminal cases.

The discipline in the stateprisons now blends kindness and religious instructions with regular but not oppressive labor, and is producing results propitious to morality and consoling to virtuous sympathy; but I deeply regret the failure of all my efforts to induce the legislature to prevent the growth of crime by reform in the construction of houses of detention and correction, and in the government of such institutions.

NOTE.—A special object of this extra session of the legislature was to divide the state into Congressional districts.—*Ed.*

An agent has been appointed to explore the mineral districts and inquire into the expediency of substituting labor in mines for the present mode of employing convicts.

A recent election in the city of New York was attended by a turbulent outbreak, in which officers engaged in canvassing votes were compelled to leave the ballot-boxes, and the outrage was followed by an attack upon a Christian church and the dwelling of its ministers. The interruption of the canvass resulted in a suspension of the functions of the common council during nearly two months. The principle of universal suffrage was nevertheless vindicated by the tranquillity with which the people awaited and obeyed decisions on the questions in issue by the judicial tribunals.

A spacious aqueduct has been constructed, by which the Croton river, having been raised to the height of one hundred and sixty-six feet above tide, is diverted from its natural channel in Westchester county, conveyed nearly forty miles over formidable inequalities of surface, and across the Harlem river, and discharged into capacious reservoirs, from which the waters are dispensed throughout the city of New York. This new and successful achievement in the march of internal improvement, provides the metropolis with an element indispensable to health, comfort, and security, exceeding in volume the supply of the city of London, and fully anticipates the wants of the vast population which must eventually be concentrated in our commercial capital. The cost of the work exceeds twelve millions of dollars, and I deem it a subject of just pride, that the credit of a mere municipality has proved adequate to an enterprise which in any other age could have been attempted only by the strong arm of an imperial or despotic government. The structures, not less enduring than useful, will remain a perpetual monument, not only of the forecast and public spirit of the municipal council, but also of the advanced state of science in our country.

The remainder of the journals of the Revolutionary legislature and convention, containing the correspondence of those bodies with Congress, with other states, with citizens in arms, and in the public councils, and with friends of liberty in America and Europe, has been printed and will vindicate the memories of our ancestors from cotemporaneous suspicions of disloyalty to their

country, and enhance our already high veneration by making us more fully acquainted with their trials and virtues.

Aided by the liberal interposition of the president of the United States and the efficient assistance of the American ministers in London and Paris, our agent has obtained access to the public archives in those capitals; and the documents which he is transcribing, together with those he has procured in Holland, will furnish complete transatlantic annals of the colony of New York from its foundation until its independence. We were before indebted to the government of Great Britain for very munificent contributions to our library. I ask your permission to mark our appreciation of the high national courtesies we have received from European states, by transmitting to them copies of the forthcoming reports on the natural history of our commonwealth.

I have great pleasure in informing you that the publication of those reports is in such rapid progress that portions will be submitted at the present session. A suite of the specimens which have been collected has been partially arranged in the Geological Museum, and the seven other collections intended for the seminaries of learning will soon be ready for their destination. The enterprise thus consummated, originated in a merely economical desire to explore our mountains in search of coal. All that has been gained in that view, is, a certain knowledge that this important mineral does not exist within our borders, and that an adequate supply can only be introduced by improving and extending the channels of our trade with other communities. But the absence of coal is bountifully compensated by saline springs, and rich accumulations of lime, gypsum, marble, and hydraulic cement, in the Silurian formations; by marl, and peat, in the quaternary regions; by plumbago; and also by deposites of iron, lead, zinc, and copper, in the granite districts, in the vicinity of almost inexhaustible forests furnishing the fuel indispensable for the reduction of these minerals. Our lyceums, moreover, will be enriched with specimens of all the animals and plants, and of every soil, rock, mineral, and fossil, as yet discovered within our territory. The field within which medicinal science, agricultural chemistry, mineralogy and economical geology, have hitherto pursued their beneficent investigations, is thus broadly enlarged; and such are the regularity of our rock strata and their exposure,

and such the variety and perfection of organic remains, that the survey, although its results are as yet but partially disclosed, is regarded in the European schools as affording a contribution of great value to the cause of science, with data for a more philosophical classification of facts, and important aids in reading the unerring and imperishable records in which Nature has written her own annals on the globe we inhabit.

I call your attention to some cases in which the law of Virginia, retaliating on peaceful citizens of New York injuries supposed to have been committed by her executive and legislative authorities, has been put in operation. Although our commerce is not greatly embarrassed by these unfraternal proceedings, yet unoffending citizens ought not in such cases to be left to incur inconvenience, or suffer loss. I, therefore, renew my request for authority to instruct them to test the validity of the law of Virginia in the legal tribunals.

The terms in which the supreme court of the United States assigned reasons for their judgment, in a recent case between Maryland and Pennsylvania, would invalidate every state law concerning fugitives from justice, which should fail to facilitate the capture, even without legal process, of persons claimed as slaves, whether they had ever been subjected to servitude or not; but the authority of the decision can not be extended to cases presenting facts materially varying from those which marked the case thus adjudicated. It is, therefore, believed that the privileges of habeas corpus, and the right of trial by jury, as yet remain unimpaired in this state; and that we are not obliged to retrace what is justly regarded as an important advance toward that complete political and legal equality which, being conformable to Divine laws and essential to the best interests of mankind, will ultimately constitute the perfection of our republican institutions.

Rhode Island has been made a theatre of resistance to public authority, growing out of unwise delays in establishing equality of suffrage. A person assuming the character of chief magistrate of that state, transmitted to me a resolution passed by assemblages which claimed to be a legislature, announcing to the executive and legislative authorities of this state, the organization

of a new government in that commonwealth, under a constitution approved by a portion of the people in an election held and conducted without previous legislative authority. Almost simultaneously, the governor, in conformity with constitutional laws of the United States, gave me notice that the individual who had thus assumed executive functions had taken refuge in the city of New York, and required me to arrest him as a fugitive, charged with the crime of treason, committed in an attempt to subvert the government of Rhode Island by military force. I complied with the requirement, by issuing process; but the offender was not found within our jurisdiction. I also adopted proper measures to prevent the arms and military stores in our arsenal near the sea-board, from being used in the attempt to desolate a sister-state with a civil war. The people of Rhode Island nobly sustained their government, without the aid they had a right to expect from the federal executive; and measures have since been adopted by their legislature, designed to allay any public discontent and satisfy just claims for an enlargement of suffrage.

The long-delayed negotiations between the United States and Great Britain are supposed to be on the eve of completion by a treaty in which our northern boundary will be re-adjusted, so as to secure to this state an accession of territory on the shore of Lake Champlain important to its defence against future aggression, and controversies, which have endangered the peace of the two nations, will be permanently settled on principles consistent with the national honor.

I have forborne to demand fugitives from justice who have fled to the British provinces, and also to surrender criminals from those provinces who have taken refuge in this state, from the time when the supreme court of the United States virtually decided that the powers necessary for those purposes were exclusively national, and, therefore, belonged to the federal government. The governor-general of British North America, however, surrendered fugitives upon my informal request, until instructions, very recently received from the royal government, have obliged him to discontinue such courtesies. The evils resulting from the facility with which offenders against the laws of either country may secure impunity for their crimes, are so great, that I have thought proper to invoke the constitutional interposition of the general government, in the hope that the subject might find

a place among the matters in negotiation between the two nations.

I have also considered it due to the cause of humanity, to address the chief magistrate of the Union in behalf of unfortunate citizens of this state suffering the penalties of exile and imprisonment in an island of the Pacific ocean, for political offences committed under the influence of natural but misguided sympathies for the inhabitants of the British provinces on our borders.

Immigration was, during the last year, checked by alarms of war, but an increased tide is now setting into the country. Our thoroughfares are enlivened with families; and even small communities from the British islands and continental Europe, with their property, their teachers, and their pastors, are seeking homes among us, and a participation in our social and political enjoyments. Viewing this as an important and rapidly-increasing element of national strength and greatness, and regarding all prejudices against any portion of the common family of mankind on account of the accidents of birth, laws, language, or religion, as unwise and deeply injurious, I renew my recommendation heretofore made for removing the disabilities by which resident aliens are embarrassed in acquiring, holding, and transmitting real estate.

I regret to inform you that the tolls received on all the canals during the present political year, compared with the amount collected during a similar portion of the last year, exhibit a diminution of one hundred and seventy-seven thousand six hundred and ninety-seven dollars; that the amount of duties received from auction sales is less by seven thousand one hundred and forty-one dollars, than the sum received during the corresponding portion of the preceding year; and that the revenue from duties on the manufacture of salt, exhibits a similar diminution of eight thousand eight hundred and ninety-three dollars. The aggregate decrease of the revenues from these several sources thus far, is one hundred and ninety-three thousand seven hundred and thirty-one dollars. The diminution in the canal revenues has been mainly experienced in the tolls on merchandise passing from tidewater into the interior. It is probable, however, that the descending business in transporting to market the large agricul-

tural surplus, furnished by the abundant harvest, will go far toward supplying the deficiency.

I submit a communication from the superintendent, showing that the manufacture of salt, seriously embarrassed by the present ruinous revenue system of the United States, co-operating with the commercial pressure, must probably be altogether relinquished before the expiration of the year, and I not only invoke your direct action, but solicit your influence with Congress to avert a disaster which would increase the embarrassments of the treasury, and be deeply injurious to a large and important portion of the community. Our salines have hitherto constituted an essential element of our fiscal strength, and have always been regarded as among the most valuable and permanent possessions of the state. The possible sacrifice, therefore, by the general government, of so important an interest can not but excite anxiety and alarm.

An agent was appointed to receive the portion of the proceeds of the sales of the public lands, which, by a law of Congress, was payable to this state on the 1st of July last, and proceeded to Washington for that purpose, but was informed at the treasury that the apportionment had not been completed, and the money has not yet been received. The real importance of this revenue is not at all affected by the amount which it yields at this time, since the national domain remains undiminished except by sales. Whether the stream of revenue be temporarily obstructed, as at present, or flow onward with a strong and increasing current, as at more prosperous periods, its ultimate benefits must be substantially the same.

This state having long and uniformly expressed opinions in favor of protecting national industry, by an adequate tariff, it must be an occasion of general regret that the president perseveringly opposes and defeats the passage of laws designed to accomplish that object. And our regret is mingled with surprise, when we consider that it is at least doubtful whether there is any legal authority for the imposts now levied. The president, moreover, unequivocally indicates a determination to defeat any tariff law which can be passed, except it be accompanied by a relinquishment by Congress of the right to protect agricultural and manufacturing industry otherwise than incidentally, and also by a diversion

from the states of the revenues arising from the public domain. The right to adjust the pecuniary burdens imposed by the government upon its citizens would seem, of all others, to belong properly to the legislature. It can not for a moment be supposed that the founders of the constitution intended that the executive should dictate to the national Congress, laws regulating revenue and finance.

The fourth day of July last completed a quarter of a century since the system of internal improvements was undertaken by this state. Within that period, artificial navigation has been opened throughout distances equal to eight hundred and three miles; and animal power in transportation has given place to the steam-engine, on routes seven hundred and fifty-seven miles in length. Navigation has been established from tidewater to Lake Champlain, Lake Oneida, Lake Ontario, Cayuga lake, Seneca lake, Crooked lake, and Lake Erie, and to the Mohawk and the Oswego, to the Seneca and the Genesee, the St. Lawrence, the Delaware, and the Susquehannah rivers. Not only has our frontier trade, which sought distant markets, been incalculably increased, and concentrated at the city of New York, but the shores of Lake Huron, Lake Michigan, and Lake Superior, and the banks of the Ohio, the Miami, and the Wabash, have been reached by our vessels, and the once inconsiderable traffic of that vast central region, which stretches from the summit of the Alleganies to the banks of the Mississippi, has grown into an immense trade and become largely tributary to the same fortunate metropolis. Meanwhile our canals and railroads have been connected with similar systems, a thousand miles in length, in the eastern states, and with still more extended artificial channels in the communities beyond our southern borders. Our revenues have been increased from $419,900 in 1817, to $1,952,000 in 1841; our school and literature funds have been doubled; the remote districts of the state have become the homes of an intelligent and industrious population; four flourishing cities and upward of a hundred incorporated villages have been called into existence; our commercial emporium has trebled in population and added one hundred and seventy millions to its wealth; the revenues, commerce, and physical strength of the whole commonwealth have been augmented in almost an equal proportion: and the states are bound together with bands stronger than those

of merely political compact, and the danger of dismemberment is happily averted. New York was the projector of the system which, though yet incomplete, has produced these wonderful results; and she may point to it as a column, designed and shaped by herself, to strengthen and perpetuate the national structure.

But the high career of prosperous and well-directed enterprise has been brought to a sudden and humiliating close. For the first time in the quarter of a century which has elapsed since the ground was broken for the Erie canal, a governor of the state of New York, in meeting the legislature, finds himself unable to announce the continued progress of improvement. The officers charged with the care of the public works, have arrested all proceedings in the enlargement of the Erie canal, and the construction of the auxiliary works. The New York and Erie railroad, with the exception of forty-six miles from the eastern termination lies in unfinished fragments throughout the long line of southern counties, stretching for four hundred miles, from the Walkill to Lake Erie. The Genesee Valley canal, excepting the portion between Dansville and Rochester, also lies in a state of hopeless abandonment. The Black River canal, which was more than two thirds completed during the last year, has been left wholly unavailable. As if this were not enough, two railroads, toward the construction of which the state had contributed half a million of dollars, and public-spirited citizens large sums in addition, have been brought to a forced sale and sacrificed at an almost total loss to the treasury, without yielding any indemnity to the stockholders, and without even securing a guaranty that the people would be permitted to enjoy the use of the improvements. At the same time, the jealousies, alike unjust and unwise, which have so long delayed the construction of the New York and Erie railroad, are fostered with expectations authorized by official announcement of a similar sacrifice of that work as soon as the sale can be compelled by law—a sacrifice which must result in a loss to the treasury of three millions of dollars, and to beneficent contributors of nearly two millions in addition, and a final overthrow of all the long-cherished and highly-excited hopes depending on the accomplishment of that enterprise.

The painful emotions excited by the condition to which the public works are thus reduced, might be somewhat relieved, if there were any well-grounded hope that their prosecution would

be resumed within any reasonable period. But the provisions of the law suspending those works, as well as the contemporaneous expositions of the grounds on which it was enacted, with every rational view which can be taken of its tendency, forbid any such expectation. The policy of the act plainly is, that the debt of the state shall in no event be increased for the prosecution of improvements; nay, further, that the whole of the existing debts shall be extinguished before any additional sum shall be borrowed, and that the accruing revenues, instead of being appropriated, as heretofore, to the prosecution of the works, shall be henceforth applied exclusively to the establishment of a fund for the extinguishment of the existing debts, although, with small exceptions, those debts are redeemable only at distant periods. It is but too apparent that these provisions render any further progress in our public works wholly impracticable. The present generation, if this law continue, must abandon all hopes of seeing the system resumed, and it will only remain for them to pay the whole cost of works, in a great degree useless, because left unfinished, and hastening rapidly to dilapidation and ruin.

The objects which the legislature had in view, in directing the suspension of the public works, were declared to be to pay the debts of the state and preserve its credit. The means of paying the debts are derived from revenues and taxes. But the state, so far from diminishing, has increased its indebtedness, by becoming liable to contractors for heavy damages which might have been avoided by prosecuting the works; while, by discontinuing the necessary enlargement of the Erie canal, the increase of revenues hitherto so constant, and so confidently relied upon for the reimbursement of the debts, is checked, and must ultimately cease. Simultaneously with the commencement of this policy, a new mode of stating the public accounts was adopted. Debts due from the state to itself, and debts for the payment of which funds had been invested and set apart, were added to the aggregate of debts for which no provision had been made; the conditional guaranty of the credit of the New York and Erie Railroad company was converted into a fixed debt, by withholding the aid necessary to complete their road and render it productive; and other similar guaranties in regard to which there had been no default, nor indications of default, by the principals first liable, were made to swell the aggregate indebtedness with which it

was represented that the treasury was oppressed. The principle that our improvements were to be made exclusively on the credit of their revenues, and without burdening the people, was abandoned by levying a tax exceeding six hundred thousand dollars, bearing alike on the districts the least, as well as those the most, benefited by the construction of the works. Nor has the expectation of restoring the stocks of the state to their former high valuation been adequately realized, and certainly not to any extent commensurate with the sacrifices which have been made. The fiscal officers of the state are not now able to negotiate loans even at seven per cent., except occasionally for small amounts. Under these circumstances, the inquiry arises whether the policy thus attempted ought to be continued. An imperative sense of duty compels me again to declare my conviction that it is radically wrong, and that erroneous views have been taken of the causes of our embarrassment.

Previously to the present session of Congress, when as yet only one state had omitted to pay the interest on its debt, and that, too, not without a pretext that betrayed a desire to avert the consequences of so great an error, I called the attention of the federal government to alarming indications of a general failure by the indebted states, and invoked the constitutional efforts which that government might effectually make to avert such a catastrophe. Afterward, when the legislature of this state assembled at the beginning of the present year, the same apprehensions were imparted to them, with a view of the deep interest which we had at stake in the maintenance of the credit of our sister-states. I urged that their failure would produce effects disastrous to the national industry and enterprise, and that it would necessarily result in diminishing the revenues from our canals and all other sources. I submitted, also, that although we had ample resources and revenues, our credit must unavoidably receive some injury from our intimate political connection with insolvent states, and that if it should become materially impaired, serious embarrassment would be experienced in prosecuting the public works. Adverting to erroneous opinions then somewhat prevalent, I showed that the revenues from the canals, steadily increasing at the rate of fifteen per cent. every two years, notwithstanding temporary fluctuations, together with the revenue

from the public domain, constituted ample resources for borrowing all the money necessary to complete the works, and for paying the interest on the then existing debts, and those which it would be necessary to contract, and for extinguishing the principal as fast as it would become due. I demonstrated that the danger to which the credit of the state was exposed, arose, not from any cause merely local or temporary, nor at all from the extent of our unfinished works, nor from the amount of our indebtedness, nor from the firmness with which we had persevered in our improvements during the three previous years, but from the failure of the confidence of foreign capitalists, and even of the American people themselves, in the financial wisdom and integrity of the governments of other states.

I submitted as a course proper in the emergency, that care should be taken to foster our own credit by stating justly, and without exaggeration, the actual indebtedness of the state; by husbanding our revenues; by preventing our conditional guaranties from becoming fixed debts; by scrupulously performing our engagements with contractors; by prosecuting the unfinished works firmly, and even with sacrifices, if necessary; always adhering, however, to the fundamental condition that no more money should be borrowed in any one year than a sum, the interest of which could be paid with the current revenues, to be ascertained from the actual receipts of the preceding year; and by constituting a sinking fund with the moneys annually received from the proceeds of the national domain, together with a sufficient portion of the surplus revenues, which should be inviolably pledged, and steadily applied to the constant diminution and final extinguishment of the principal of our debt.

And to these suggestions, relating to the direct action of the legislature, I added others, earnestly recommending that the influence of this state should be exerted to secure the adoption of national measures which the exigency rendered necessary. Prominent among those measures were tariff laws, the restoration of the currency, and some mode of enabling the indebted states to render their portions of the proceeds of the public lands immediately available for the payment of their pressing engagements. And I also urged that the false and fatal principle of repudiating public debts, which as yet had not been openly promulgated, should be met by this state with such an expression of disappro-

bation and rebuke, as would convince the world that come what might of trial and disaster, so far as our action and influence could be effectual, the faith of not only this, but all the states of the American Union, should be preserved for ever inviolable.

The policy thus recommended did not prevail, and the evils then apprehended are fully realized. State after state, some with unavailing struggles, but others without any, have neglected to perform their fiscal engagements, and thus a dark stain is diffusing itself over the escutcheon of our country. The credit even of the Union is virtually destroyed, and our own is impaired, notwithstanding our great resources and the convulsive efforts which have been made to induce a discrimination between that credit and the broken faith of other states.

Under these circumstances, I must adhere to the views before submitted, and invite their reconsideration; and to avoid any misapprehension, I recommend that the legislature rescind the law directing the discontinuance of the public works; render to the New York and Erie Railroad Company the aid necessary to enable them to recover their credit and resume their operations; and direct the fiscal officers of the state, instead of reserving surplus revenues from the canals for the payment of debts due at distant periods, to apply such revenues, with the proceeds from the national domain, to the prosecution of the public works, upon the plan before submitted, until the works shall be completed and become productive; and provide other and additional temporary means, if necessary, for that important object. And I further recommend that the legislature urge upon Congress, and especially upon the president, the necessity of tariff laws adequate to revive our industry and commerce, and restore the credit of the general government; of a sound currency upon a specie basis and of uniform value throughout the Union; and above all, of such measures as shall secure to the several states not only their distributive shares of the public lands, but such further constitutional aid based upon those lands, as will enable them promptly to recover their credit.

It can not be denied that the time which has elapsed and the policy which has been pursued, have increased the difficulties to be overcome, and yet with proper effort the ground we have lost may be recovered. We are oppressed, not so much by opposing

forces as by our own irresolution, and a small portion of that energy which was put forth when our system of improvement was undertaken, would secure its re-establishment and successful triumph. It was not then thought unbecoming for the state to invoke the co-operation of the Union and of the several states in aid of our efforts, and surely it can not be deemed discourteous now to urge upon them the adoption of measures which will enable them to perform their own obligations, the neglect of which has involved, however unjustly, the whole country in a common calamity.

Whatever may be the decision of the legislature on these momentous questions, it is at all events desirable to mitigate, as far as may be, the misfortunes in which the community is involved, and above all to abstain from any measure which would aggravate existing evils. I do therefore most earnestly protest against any further sacrifices of works already completed, or in progress of construction, as being alike wanting in magnanimity and wisdom; and while I ask for the New York and Erie railroad no preference over the works in which the state is directly engaged, or over those of similar character in other localities, yet in view of the imminent jeopardy in which that great enterprise is now placed, I recommend that the proceedings for its sale be discontinued; and whatever else may be omitted, I again urge that adequate measures be adopted to secure the immediate resumption and speedy completion of that work, which, under better auspices, would add dignity and lustre to the character of the republic. I also earnestly recommend that instructions be given to the canal commissioners, requiring them to complete and put in operation without further delay, at least the nearly finished portions of the enlarged Erie canal.

The people, however, look not for temporary or partial relief, but for the re-establishment of the system of internal improvement upon broad and impregnable foundations. Our fellow-citizens urge us to resume the public works, by pleading the distress which their suspension has already produced. They point us to labor unemployed, and masses impoverished; to agriculture unrewarded and burdened; to trade diminished and discouraged; to credit paralyzed; to land and property depreciated and passing from hands hardened with the labor of production, into others that wait to gather the ripened fruits of industry;

to disappointed expectations built on the public faith, which no damages can reach or compensate; to dilapidated structures with increasing expenditures; to diminished revenues and protracted taxation; to increasing and hopeless embarrassment and decaying enterprise; and to a long and cheerless decline from a career in which so much has been won for the interests and honor of the state.

But we need no such painful incentives. Progressive physical improvement, comprehending the north as well as the south, the east and the west, opening every necessary channel, and disclosing every resource which nature has bestowed, is emphatically the policy of the state. And we are required to return to the course we have left, by every consideration of duty to ourselves, to posterity, to our country, and to mankind.

In closing this, my last general communication to the legislature, it would evince singular insensibility not to anticipate my retirement from the trust which I have received from my fellow-citizens. Far from indulging a belief that errors have not occurred in conducting the civil administration of a state embracing such great and various interests, I am, nevertheless, solaced by the reflection, that no motive has ever influenced me inconsistent with the highest regard for the interests and honor of the state, and with the equality justly due to all its citizens. It may be, that in seeking to perfect the diffusion of knowledge, or in desiring to raise from degradation or wretchedness less favored classes, unjustly depressed by the operation of unequal laws or adventitious circumstances; or, in aiming to carry into remote and sequestered regions, the physical and commercial advantages already afforded to more and fortunate and prosperous districts, I have urged too earnestly, what seemed to me the claims of humanity, justice, and equity; yet, remembering the generous appreciation which those efforts have met, I shall carry with me into retirement, a profound sense of obligation, and a spirit of enduring gratitude. I shall never cease to invoke in behalf of the people of this state, a continuance of the invaluable privileges, civil and religious, which they now enjoy, and to implore that great and beneficent Being who directs and regulates the destinies of nations, to promote and watch over this commonwealth, in its continual advancement throughout all succeeding ages.

SPECIAL MESSAGES.

DEATH OF STEPHEN VAN RENSSELAER.

ALBANY, JANUARY 28, 1839.

To the Legislature:

I announce the death of Stephen Van Rensselaer, formerly lieutenant-governor, and, at the time of his death, chancellor of the university, president of the canal board, and senior major-general in the militia of this state.

Besides having occupied these important stations, the deceased was, at different periods, a member of the convention which framed the constitution of this state, a representative in each house of the legislature, and also a representative in the Congress of the United States.

His various and eminent public services, and the universal esteem which he secured by the blamelessness and benevolence of his life, render it proper that I should communicate the mournful event to the legislature, that they may adopt such measures as the occasion requires.

Note.—Stephen Van Rensselaer died at the Manor house, in Albany, on the 26th of January, 1839, aged 74 years. Although, in compliance with his request, his funeral obsequies were without any pageant, the legislature, and the officers of the state attended his funeral.—*Ed.*

THE COLONIAL HISTORY OF THE STATE

ALBANY, FEBRUARY 5, 1839.

To the Assembly:

Gentlemen.—I have the honor to transmit a memorial from the New York Historical Society, praying for the passage of a law authorizing the appointment of an agent to visit Europe, to transcribe documents remaining in the public offices of England and Holland, which may serve to illustrate the colonial history of this state.

While it is due to ourselves, to the memory of our predecessors, and to a just regard for the respect of posterity, that every important circumstance connected with the rise and progress of our free institutions should be recorded and illustrated, such a proceeding might advance the cause of free government throughout the world.

It is believed that we have hitherto manifested a singular indifference in regard to this object. The English government has made a munificent gift to our state library, of records illustrating the early history of that nation. Massachusetts has taken care to preserve the resources for her history during the Revolutionary contest, by causing to be published the journals of her colonial congress. The state of Georgia has an agent in London, engaged in taking copies of the records relating to that state. New York certainly has no less interest in rescuing and preserving the memorials of her colonial condition.

I respectfully commend the petition of the New York Historical Society to the favorable consideration of the legislature.

Note.—A law was passed May 2, 1839, in accordance with the suggestion of the Historical Society, and John Romeyn Brodhead, Esq., was appointed an agent to visit the European capitals.—*Ed.*

GREAT BRITAIN AND THE NORTHERN BOUNDARY.

ALBANY, MARCH 7, 1839.

To the Legislature:

The Congress of the United States having had under consideration the serious misunderstanding which had arisen between the state of Maine, and the province of New Brunswick, immediately previous to their adjournment, passed an act giving to the president of the United States additional powers for the public defence against invasion, and for other purposes. By this act, the president is authorized to resist any attempt on the part of Great Britain to enforce by arms her claims to exclusive jurisdiction over that part of the state of Maine which is in dispute between the United States and Great Britain; and for that purpose to employ the naval and military forces of the United States, and such portions of the militia as he may deem it advisable to call into service, and to increase the military and naval forces of the Union in the event of invasion, or imminent danger of invasion. Provision is also made for sending a special minister to Great Britain, to treat with the government of that country upon an amicable adjustment of the matters in difference between the two nations.

While the several state governments should carefully abstain from any act that might in any degree interfere with the constitutional duties of the federal government, it is obvious that occasions may arise in which they ought to make known to that government, to foreign nations, and to any aggrieved sister-state, that we are a united people, jealous of our sovereignty, and determined to resist aggressions upon the rights or territory of the Union. The act of Congress, to which I have referred, provisionally contemplates that the country may, during the recess of that body, be compelled to assume an attitude of defence

against a foreign power, and seems, therefore, to present one of those occasions which call for such an expression on the part of the several states. The measures adopted by Congress, seem to me wisely designed to preserve the existing inestimable relations of peace between this country and Great Britain, as well as to vindicate the rights of the state of Maine, and to maintain the honor and dignity of the nation. It can scarcely be believed that enlightened and Christian nations, bound to each other in peculiar relations of feeling and of interest, will unnecessarily suffer the harmony existing between them to be interrupted. The governments of both as well as their individual citizens, are under the strongest obligations to cultivate every disposition to amity, and to repress all tendencies to hostile action. At the same time peace is seldom the lot of any nation which does not on all proper occasions manifest that it knows its rights, and will at all hazards maintain them. I respectfully call your attention to the subject, under the expectation that an expression on our part of concurrence in the policy of the general government, will contribute to avert the calamities of war, and secure the speedy and honorable adjustment of the existing differences between this country and Great Britain.

NOTE.—The assembly unanimously responded to these sentiments, and communicated similar opinions to the president of the United States.—*Ed.*

ABUSES IN THE STATE-PRISON AT SING-SING.

ALBANY, APRIL 16, 1839.

To the Senate:

Gentlemen: I recommend that Richard R. Voris, Walker Todd, John Fisher, Joseph Hunt, and Henry Romer, be removed from the offices of inspectors of stateprison at Mount Pleasant. The grounds of this recommendation will be found in a report of the committee of the assembly upon stateprisons, submitted to the assembly on the 30th day of March, 1839—Assembly Documents, No. 335.

By that report it appears, that "the inspectors," "instead of taking upon themselves the discharge of the duties required by law," "have, in effect, surrendered their principal duties, and have committed the entire management and control of the prison, its offices and affairs, to the agent."

Among the duties which have thus been surrendered to the agent are, "the appointment of the assistants," and even the regulation of their salaries, and the "removal of such assistants," together with all the "responsibilities of providing for, treating, and punishing the convicts."

The inspectors have also "committed to the agent the duty of furnishing, at his discretion, all articles for the use of the prison, including provisions for the convicts, as well as the sale of all the wares and other articles produced at the prison."

The committee further report that the inspectors "have been deficient in vigilant and persevering attention to, and supervision over, the details of the affairs of the prison."

It is manifest that this surrender by the inspectors of their proper powers and duties to the agent, can in no degree excuse them from full responsibility to the public, for a just and wise administration of the prison. The agent of the prison, and all the

other officers are appointed by them, and are removable at their pleasure. They have never exercised this power in any instance. The inspectors must be held doubly responsible under such circumstances, for the acts and omissions of the agent and the subordinate officers.

So loosely have the supervisory powers of the inspectors been exercised, that although nearly all the assistants-keepers now at the prison, entered upon the duties of their appointment several years ago, they did not take the oath of office until August last.

Among the consequences which have resulted from the neglect of the important duties of the inspectors, are the following: "All the assistant-keepers exercise discretionary and unlimited power in the punishment of the convicts under their care respectively, for any and all offences or omissions of duty, subject, however, to the provisions of the sixth section of act of 1835, requiring from them a written report of the extent of all punishments inflicted by them, and the offences committed."

But an erroneous construction is given to the statute by the assistant keepers and agent, in consequence of which, punishments inflicted by the agent, and by his deputy, and by the assistant keepers, in the presence of either the agent, or deputy, do not necessarily come before the inspectors. The assistants do not, in all cases, report the punishments inflicted by them in the absence of the agent, and his deputy, but sometimes report the number of stripes inflicted by them, by "guessing at the number."

The principle which seems to have been adopted and pursued at the prison is that, "of governing the convicts wholly by the fear of punishment, while, at the same time, no incentive to obedience, and diligence, or skill in the performance of their task, is held up to their view, save an exemption from stripes." The committee justly remark that, by reason of this error in discipline, "the reformation of the convict, one of the most important objects of our penitentiary system, is abandoned and lost."

"During the years 1837 and 1838, the complaints of the want of food by the convicts, were more frequent and numerous than at any other period."

The "extra rations" furnished in cases of such complaints, were "sometimes insufficient," and convicts, "who were sent by their

keepers to the kitchen for food, were frequently beaten and driven away without it by the superintendent."

By reference to pages 5 and 6 of the report, it will be seen that during a long period, the provisions furnished have not been of a suitable kind, or sufficient in quantity.

"Not only have different degrees of punishment been meted out by different keepers, but cruel and unreasonable punishments have often been inflicted."

Such punishments have been "repeated during several successive days," and upon convicts, "in more than one instance," who were "insane."

"One witness deposes to one thousand lashes inflicted upon a maniac convict within the space of three weeks." "Convicts have been disabled" by severe corporeal punishment, and then have been "sent to the hospital to be cured." Others while actually "in the hospital," and "on the sick list," have been punished in the same manner.

It is proved and admitted, that contractors for the labor of convicts (in no sense officers of the prison), have sometimes been permitted to inflict severe chastisement upon the prisoners. In violation of every principle of law, and every dictate of natural justice, assistant keepers have, with the knowledge and permission of the agent, inflicted punishment upon a convict on his coming into prison, for insults offered to such keeper by the prisoner before his conviction.

Two convicts, who had been discharged from their imprisonment upon the ground that their terms had expired, were taken up by order of the agent, and recommitted, and detained in prison, as a punishment for alleged offences committed by them after their discharge.

Most of the facts hereinbefore stated, are general statements of the committee of the assembly, derived from the testimony submitted to them. I regret to be obliged to say that they are sustained by evidence which would justify even stronger statements than those presented by the committee.

There is reason to believe that convicts have been driven to suicide by the cruelty of officers of the prison, and that others, some of whom were insane, have died in consequence of like inhumanity.

It is stated in the testimony, that a female convict was scourged with whips until the blood flowed from her wounds.

Convicts have been beaten with unlawful and dangerous weapons.

The privation of food has been carried so far, that convicts have been rendered incapable of performing their allotted labor, and have sometimes been punished for their failure to perform it in that condition.

A prisoner's hands were fastened in a vice, and in that situation he was severely whipped, with the agent's permission, by a person not an officer of the prison, but a servant of a contractor.

Sympathy for the sufferings of our fellow-men is so inseparable from our nature, that it will follow them in their most degraded and most depraved estate. I am aware that this sympathy sometimes operates to embarrass the administration of justice. But I have no reason to believe that either the committee by whom this report was made, or the witnesses generally from whom the facts stated were obtained, are liable to any suspicion of having acted under the influence of excessive sympathy. These facts come before me in a manner demanding my action in the premises, and from as authentic sources as any information which we may ever hope to obtain in relation to the conduct and management of our prisons.

It is possible, and not improbable, that the testimony submitted in the report may be in some instances erroneous, and in others exaggerated, or too deeply colored; but after making all reasonable exceptions, and admitting all possible extenuation, it is still manifest that the stateprison at Mount Pleasant is governed by the arbitrary will of one individual, who is held to no lawful responsibility; and that a discipline prevails there which is arbitrary, capricious, and unequal, and often as contrary to law as it is revolting to humanity.

It is not the least remarkable feature in the case, that the officers of the prison seem to justify the cruelties complained of, on the ground that they are indispensable to the successful government of the prison.

It is quite certain that such inhumanity was never contemplated by the founders of our penitentiary system, nor has it been generally known by the people that it was practised. If our system of imprisonment, with silent dormitories, and social labor, can not be maintained without the infliction of such punishments as are disclosed by this report, then it was established in error,

and it ought to be immediately abandoned. But such is not the case. Human nature has some generous and virtuous motives left in its most depraved condition. Equality and justness, kindness and gentleness, combined with firmness of temper, would, with very few exceptions, secure the cheerful obedience of even the tenants of our stateprisons. I believe that there is at least one prison in this country, in which our system has been adopted, and in which not a blow nor a stripe has been inflicted within a period of several years.*

There is a constant tendency among those who are invested with power over their fellow-men, to exercise that power capriciously, and tyrannically. It is inconsistent with the genius of republican institutions, that any department should be exempt from a constant and jealous supervision. Such supervision is vastly more important when the agents are secluded from all public observation, and when those upon whom abuses fall are defenceless, and forgotten by their fellow-citizens. The inmates of our prisons are cut off from the enjoyment of society, but they are not removed beyond the sympathies of the people, nor are they sunk below the guardian care of the government. That guardian care in regard to the prisoners at Mount Pleasant, was committed to the inspectors of the prison. Being fully convinced that they have been unfaithful in the discharge of their responsibilities, no course remains for me but to recommend their removal.

* In Massachusetts.—*Ed.*

PROCLAMATION.

RESISTANCE TO THE CIVIL AUTHORITY IN THE COUNTY OF ALBANY.

DECEMBER 10, 1839.

WHEREAS the sheriff of the county of Albany, on the 5th day of December instant, represented to me that he and his deputies had on several occasions been resisted in executing various civil process of the supreme court against citizens of the said county, and had found it impossible to execute such process; and that therefore, on the second day of December instant, he had summoned the power of his county, or so much thereof as seemed expedient, and with that power, consisting of several hundred unarmed citizens, had proceeded to the towns where execution of the said process was required to be made; and that he was met by a large body of men, who effectually resisted him and prevented his further progress in the discharge of his duty; whereupon he had returned to the city of Albany and then applied to me to call out a sufficient military force to enable him to execute the said process;

And whereas, being unwilling to adopt that final remedy of the evil thus complained of, until every effort of a less serious character to maintain the supremacy of the laws should have been made, I directed the sheriff to obtain warrants and attachments against the persons who had resisted him in the discharge of his duty, and to proceed with the armed power of his county to execute the said process, warrants, and attachments;

And whereas, it has been made known to me that the said sheriff, together with the armed power of the county, assembled in pursuance of such directions, has been met by a large body of persons with an evident intent, accompanied by threats, of preventing him from executing the said civil and criminal process, and that the said armed power of the county is insufficient to enable him to perform his duty:

Now, therefore, be it known, that, by virtue of the laws of this state, I have taken measures to call forth a sufficient military force to enable the sheriff of the county of Albany to execute effectually the legal process committed to him and to maintain the supremacy of the laws. But, before actually employing the said military force, it appears proper to issue this my proclamation, with a view to avoid that extremity. I therefore enjoin upon the people of this county and all others whom it may concern, that they aid and assist the officers of justice in performing their duty. I appeal to all who have taken part in these unlawful proceedings, to reflect upon their nature and consequences, and to remember that resistance to the officers of justice is a high misdemeanor; that when such resistance becomes concerted and organized it is insurrection, and that if death ensue the penalties of treason and murder are incurred; that the only lawful means to obtain relief from any injuries or grievances of which they complain, are by application to the courts of justice and to the legislature, and I assure them that they shall receive every facility which the executive department can afford in bringing their complaints before the legislature. I enjoin upon them, therefore, to desist from their opposition, and to conduct and demean themselves as orderly, peaceable and well-disposed citizens, justly estimating the invaluable privileges they enjoy, and knowing that the only security for the preservation of their rights consists in the complete ascendency of the laws. I call upon them to remember, that while it is by no means my desire to look with severity upon offences which may have been committed under excitement and without due consideration of the consequences, the laws of the land cast upon them most serious responsibilities for any unhappy consequences which may result from further resistance to the authority and power of the people of this state. I warn them that assemblies for the purpose of hindering or obstructing the officers of justice are in themselves unlawful, and can not result otherwise than injuriously to the peace and happiness of the community and the public safety. They are, therefore, enjoined to abstain from tumultuous assemblages, which often lead to results not contemplated, and which are sure to involve the well-meaning in the consequences of rash counsels and the movements of evil-disposed persons.

DIFFICULTIES IN THE MANOR OF RENSSELAERWYCK.

ALBANY, MARCH 14, 1840.

To the Senate:

A resolution of the senate has been received, requesting me to communicate to that body the evidence of resistance to the execution of process, upon which the militia were called into service in December last; whether any portion of the militia of Albany county were called out; and, if so, at what time and under what provision of law; whether any reinforcements were despatched to the aid of the force first called into service; and, if so, upon what evidence of the necessity of such reinforcement; what was the whole number of the militia engaged in service or ordered to hold themselves in readiness therefor; from what counties called, and at what places did they rendezvous, and how long were they on duty.

In compliance with that resolution, I respectfully inform the senate, that, on the second day of December last, the sheriff of the county of Albany left that city with the power of his county, consisting, as was then understood, of seven hundred citizens, who had been assembled by him to aid him in the execution of civil process in several towns in his county, and in overcoming resistance which he apprehended in the performance of his official duty.

The sheriff informed me, at eleven o'clock, P. M., of the same day, that he had made an unsuccessful attempt, with the aid of the power of his county, to execute process, and required me to call out a sufficient military force to enable him to perform his duty. I directed the sheriff to submit a statement of his proceedings in writing, and advised him to consult with, and avail himself of the advice and assistance of, the district attorney of his county and the attorney-general.

On the fourth of December the sheriff submitted to me a statement, which was prepared by the district attorney. In this statement the sheriff represented, that, during three months previous, he had had process in favor of Stephen Van Rensselaer and others, executors, &c., of Stephen Van Rennselaer, deceased, against different individuals, residents of the towns of Knox, Bern, Rensselaerville, and Westerlo, and, as he believed, against persons residents of other towns in the said county, which process included declarations and writs of fieri facias, issued out of the supreme court, and returnable on the first Monday of January then next; that his under-sheriff, Amos Adams, about the twenty-eighth of August last, attempted to serve process in suits brought by the same parties, upon persons residing in the towns of Westerlo, Bern, and Rensselaerville; that he served a declaration upon a person named Hungerford on the said twenty-eighth of August; that Hungerford ordered him to return to Albany, and not pursue his purpose of serving such process; told him he could not go through that part of the county and return alive to Albany; that they (meaning persons in those towns) were determined to spill blood; that they had pledged themselves that no officer should travel through that region to serve process for the patroon, and that they had made up their minds to die in the cause of resisting any officer who should come on the patroon's business. The under-sheriff, nevertheless, proceeded in the performance of his duty, and served several declarations, and remained that night at Rensselaerville. In the night, injuries were done to his horse, wagon, and harness, all of which had been left in a stable carefully locked.

The sheriff further stated, that he had before heard that great excitement prevailed in the said towns of Rensselaerville, Westerlo, Bern, Knox, and other places in the county of Albany, among persons holding leases from the late Stephen Van Rensselaer and the tenants of the present Stephen Van Rensselaer, who is commonly known as the patroon; that the tenants had previously, in a body, resolved and conspired together to resist the collection of any rent by Van Rensselaer, and the service of all process for the collection thereof, or for enforcing the covenants contained in the leases by which their lands were held, until said Van Rensselaer should comply with their demands; that about the fifteenth of September, he employed Daniel I. Leonard,

an active and fearless young man, to serve declarations in favor of the patroon on Paul H. Vincent, Hugh Scott, Jacob Wright, Isaac Willsey, James Leggett, Peter Powell, Richard C. Fowler, Andrus Onderdonk, David Smith, Jacob I. Dietz, Johan Jost Shaver, John Shaver, and Peter Tarbush; that Leonard served a declaration upon Paul H. Vincent; that Vincent immediately sent a messenger to inform one of the neighbors that "one of the patroon's men was out serving papers;" that very soon afterward alarms were sounded in various directions, and Vincent on horseback passed by Leonard, telling him that if he wished to save his life, he must return with as little delay as possible to Albany. He served a declaration on Onderdonk; Onderdonk, subsequently, by threats and demonstrations of violence, induced him to take back the declaration. He attempted to serve a declaration on Leggett; Leggett refused to receive it and Leonard passed on; Leggett, his son, and another person, followed him, threatening to kill him if he should serve any more papers; Leggett called him a scoundrel, traitor, rascal, and villain; put his fist frequently up toward his face, and threatened that he would shoot a man who came on such business. Leonard then, after endeavoring to induce Leggett to take the declaration, laid it down upon the ground; the other persons then, by threats and demonstrations of violence, obliged him to take the process away, and extorted a promise from him not to serve any more process; he then served a declaration upon Willsey, and gave up his purpose of serving other process, and proceeded to Bern on his return homeward. Twelve or fifteen persons immediately came to that place on horseback, and soon afterward fifty persons were assembled; the mail-stage having arrived there, Leonard attempted to obtain passage therein to return to Albany; the persons assembled, among whom were Leggett, Willsey, Onderdonk, and a son of Willsey's, forcibly prevented his going in the coach; they demanded his papers, returned to him some that he had served, and required him to burn them all as a condition of saving his life; they set a tar-barrel on fire, seized him and brought him to the burning barrel; they then compelled him to throw into the flames the process in his possession, and to proceed with the whole party to Filkin's house, where they burned a barrel they had taken with them; thence they proceeded with Leonard to Onderdonk's, where he obtained the declaration he had served on that

person. They then took Leonard to Lawrence's tavern, and burned a tar-barrel there; a person named Witbeck led Leonard out, and threatened to put him into the fire; another interfered and prevailed upon them not to hurt him; they then cut off a portion of his hair, called him their prisoner, and with continued demonstrations of anger and violence, detained him as a prisoner from nine A. M. to four P. M., when it was announced to him that he was discharged.

The sheriff in his communication further represented that he had attempted, previously to the said sixteenth of September, to serve said declarations, without success, and that, at different times, he had been threatened with personal violence. The sheriff submitted to me, at the same time, a communication from Hugh Scott, Esq., secretary of a standing committee of citizens of the towns before mentioned, reciting, among other things, that it was understood that the sheriff proposed to visit those towns for the purpose of serving process, and that a great excitement existed there, and referring the sheriff to the treatment the said under-sheriff Adams and one Lansing had received. The communication also stated, that the committee were requested to inform the sheriff that it would be advisable for him to remain at home unless he should come in the character of a private citizen.

The sheriff further stated, that about the sixteenth of October last, he, with three assistants, set out for the town of Bern to serve process; that after proceeding to Reidsville, about sixteen miles from the city of Albany, they were met by a body of from seventy to one hundred men in the main road, who forcibly prevented their further progress; alarms were sounded by different persons. As the sheriff and his assistants approached Reidsville, persons assembled from different directions, a tar-barrel, with tar therein, was set on fire in the road, and the persons assembled declared that he should go no further on business for Van Rensselaer: they seized his horse; he commanded the people to give way and let him pass and transact business; but they refused to obey, and he was compelled to return to Albany without having served any process, for want of sufficient force to overcome the resistance thus made.

The sheriff in his communication further stated, that on the twenty-seventh of November, he, together with Angus M'Duffie,

former sheriff, and Amos Adams and Isaac Winne, deputies, again proceeded to execute process; that on arriving at Reidsville alarms were given in different directions, and about three hundred persons soon assembled. His horses were seized and turned toward Albany, and he was told that he should go no further, and execute no process for Van Rensselaer. A number of the persons assembled had sticks in their hands, and resisted his further progress, and the sheriff for want of sufficient force to overcome the resistance thus encountered, returned, and was followed about eight miles by a large portion of the assembly, blowing horns, and vociferously crying "Down with the rent."

He further represented that being satisfied from the efforts he had thus far made, he should be wholly unable to succeed with any ordinary force or small body of men, he issued notices for six or seven hundred citizens of his county and caused them to be served, thereby commanding the said citizens, to appear at his office in Albany, on the second day of December, at ten o'clock, A. M., to assist him in serving process and in overcoming such resistance as he had reason to apprehend in the execution thereof, in different towns in the county; that he set out on that day with from five hundred to seven hundred citizens for the purpose of executing such process; that he proceeded to Clarksville, twelve miles from the city, and found there about one hundred men on horseback, with others on foot; the sheriff being then in advance of his main force with a body of about two hundred men, some of whom were mounted, and others were in carriages and on foot. That with about one hundred men mounted he was proceeding to Reidsville to ascertain whether the whole force would be of any service, or sufficient to effect a passage through the body of men he had understood was there assembled. When he arrived at the hill called the Helderberg, about a mile before coming to Reidsville, he was met by from four hundred to five hundred men on horseback, and these were then joined by those he had before met at Clarksville. This force detained the sheriff and his posse about half an hour, but finally permitted him to proceed to Reidsville. At Reidsville he met a multitude of from fifteen to eighteen hundred persons, who entirely filled the road and peremptorily and absolutely refused to let him pass further. The sheriff's communication showed that there were at least fifteen hundred men assembled there against the sheriff and

his posse; that most of the persons so assembled were armed with clubs and apparently prepared for forcible resistance; that he attempted to pass through this crowd with a part of his posse on horseback, but was crowded back and pressed in by horsemen; that he commanded the resisters to give way and attempted to pass through the crowd; that a rush was made upon him and a cry arose "Stop them," and the sheriff with his posse were stopped, and forcibly prevented from going further; that he then became entirely satisfied that any further attempts would be useless, and that his whole force was entirely inadequate to overcome the resistance thus presented; that from the temper manifested, he did not deem it discreet or advisable to attempt to array his posse, chiefly, and almost wholly unarmed, against the force opposed; that he therefore returned without having been able to execute any process, and that a large body of the resisters followed him and his posse on their return, until they reached a point near Clarksville.

And the sheriff in his said communication further stated that from the facts he had thus presented, and from information in his possession, derived from various sources, he was entirely satisfied that the power of his county was insufficient to enable him to execute said process; that at least several thousand were combined in the said county to resist him in any effort he might make to execute process in favor of Stephen Van Rensselaer, and therefore he applied to me, according to the statute in such case made and provided, for such a military force from any other county or counties as should be necessary to enable him to execute the said process.

Although entertaining no doubt that the sheriff's communication was entitled to full credit, yet I deemed it proper to require that it should be verified and corroborated. He therefore made oath to the same, and submitted to me statements fully corroborating the facts therein contained, made by Amos Adams, and Daniel I. Leonard, esquires, and also an affidavit by Colonel Peter Relyea, jr., and by Franklin Townsend, Stephen Paddock, Thomas B. Ridder, and James Meeks, esquires, of the city of Albany.

Upon receiving this communication, I immediately requested the attendance of the attorney-general, the secretary of state, the adjutant-general, and several discreet and respectable citizens of

Albany. After a consultation with them, and on the fifth day of December, I delivered to the sheriff a written reply to his communication. In this reply I stated to the sheriff that the measure he requested me to adopt, was the final remedy in cases of organized and persevering resistance to the execution of the laws, and that, although the case presented was marked by circumstances from which it might be inferred that such resistance was resolved upon by many citizens of his county, yet I thought a due regard to the peace of the community, and the public welfare, required that all other efforts should be made to accomplish the service of process, before that final remedy should be employed. I therefore instructed him to enter complaints and obtain warrants, in due form of law, against the resisters referred to in his communication, and to obtain attachments from the supreme court against such resisters, for their contempts; and having obtained such process, to call upon me for further directions.

In pursuance of the instructions thus given, and with the aid of the attorney-general, the sheriff moved the court for attachments against various persons described as resisters, and sued out warrants before the police-justice, of the city of Albany, against persons charged with having made such resistance. On the seventh of December, he informed me that process of attachment had been issued to him by the supreme court against the resisters, and also that he had warrants in the name of the people against various persons who had resisted him as before mentioned.

Thereupon, and on the seventh day of December, I directed the sheriff to summon a posse comitatus to assist him in overcoming any resistance he might apprehend in the execution of the said warrants and process, and in securing, arresting, and confining the resisters, their aiders and abettors, to be dealt with according to law; and I directed him, for that purpose, to summon the uniformed military corps of the city of Albany, and direct them to appear with their usual arms and equipments. I further directed him to proceed with such armed posse comitatus, and if resisted, to seize the resisters, and repel force by force, being careful to avoid destruction of life, where it should not be indispensably necessary to maintain the supremacy of the laws.

Directions were at the same time given to the keeper of the

arsenal, to furnish the armed posse with the arms and ammunition which should be necessary.

The sheriff promptly complied with the directions given him, and on the same day (Saturday) summoned the military companies of Albany, to appear on Monday morning, the ninth of December, at four, A. M., at the arsenal, thence to proceed as the armed power of the county.

On the next day (Sunday), the eighth of December, a letter was written to Major-General Doughty, of the thirty-first division of infantry, in the city of New York, by the adjutant-general, in pursuance of my directions, requesting that he would have in readiness, to march at two hours' notice, six hundred men from the division under his command, and stating that Aid-de-camp Colonel J. Armory, who was the bearer of the letter, would give him the necessary explanations; and on the same day, a similar letter was sent to Major-General Sandford, of the first division of artillery, in the city of New York, requesting him to hold in readiness nine hundred men.

Brigadier-General Averill, of Montgomery county, being then in the city, was informed that if it should become necessary, he would be required to march a portion of his brigade, not exceeding five hundred men.

The Albany military companies cheerfully responded to the call made upon them by the sheriff, and on Monday the ninth of December, at about six, A. M., in number about one hundred and twenty men, proceeded as an armed posse under the command and direction of the sheriff to enable him to execute process and overcome any resistance that might be offered him in the performance of his duty. A storm of great severity commenced soon after their departure from the city and continued during the day and the night following. The roads soon became almost impassable, and the country in the region of the apprehended resistance was covered with snow.

During Monday evening reports brought by persons who had gone out to witness the proceedings of the sheriff, stated that a large assemblage of persons, estimated at not less than two thousand, was convened at and in the vicinity of Reidsville, prepared to resist the sheriff and the troops under his command. Deep solicitude was felt for the citizens who attended the sheriff as his armed posse comitatus, and many patriotic citizens immediately

organized themselves into two volunteer companies and tendered me their services if I should deem them necessary.

At eleven o'clock on Monday night, I received, by express, a written report from the sheriff, and Major Bloodgood and Quartermaster Jesse Buel, who attended the sheriff. This report stated that the posse comitatus had met no active resistance; that they had proceeded to Reidsville, where they met, actually assembled in the road, from five hundred to six hundred horsemen, and soon about an equal or greater number of men assembled in and about the neighboring houses and sheds; that the posse made their way entirely through the crowd, and were satisfied that the people assembled had, for the present, no intention to resist, but had so arranged matters that no accommodations could be obtained for the posse, and they were obliged to fall back to Clarksville. The sheriff and his assistants farther stated, from their observations, and from what they had heard, and partly from information and advice of some respectable citizens of the vicinity, that no resistance need be apprehended, unless in the case of endeavoring to bring off persons or property, in which case there was no doubt the small force then under command of the sheriff would be effectually overpowered. They further stated that they required an immediate supply of provisions, tents, and blankets.

On receiving this despatch I convened the several state officers before mentioned without delay, and after consultation with them, and in accordance with their advice, I issued general orders converting the said armed posse then under command of the sheriff, and consisting of the members of the military companies of the city of Albany, into a military force, and calling the same into actual service, under the direction and command of the sheriff of the county of Albany. The orders were issued by virtue of my authority as commander-in-chief of the militia of the state, of the general duty enjoined upon me by the constitution and laws, to see the laws faithfully executed, and of the laws authorizing the sheriff to call forth the force of his county on occasions of resistance; and the measure was deemed necessary as well for the safety and protection of the troops in the danger to which according to the communication received they were exposed, as more effectually to enable the sheriff to execute the process committed to him.

On Tuesday morning a further communication was received

from the sheriff, in which he stated that, having assembled a military force pursuant to my directions, and having proceeded to that part of the country where the persons resided against whom he had process, he found a body variously estimated at from one thousand to twelve hundred persons collected together with the avowed purpose of obstructing him in the execution of his duty; that the pretexts upon which the opposition to the laws was founded were such as to have affected in a greater or less degree all the towns in the county out of the city, and he was entirely satisfied that the power of his county was not sufficient to enable him to execute the process of the supreme court, and the criminal warrants which had been delivered to him; and therefore he made application to me for such military force as the occasion demanded.

Thereupon I held a consultation with the attorney-general, the secretary of state, the comptroller, and the adjutant-general, and with their unanimous advice I determined to adopt such measures as should be best calculated to maintain the supremacy of the laws and avoid the evils of civil commotion.

General orders were issued reciting that whereas it appeared that the power of the county of Albany would not be sufficient to enable the sheriff to execute process, and the sheriff having made application for a military force to enable him to perform his duties, the following military corps were ordered into the service of the state from Rensselaer county, viz.: the Troy Citizens' Corps, the Troy Independent Artillery Company, and the Troy City Guards. These troops were commanded to move at once to the city of Albany, there to receive orders.

General orders were also issued calling into service five hundred men from the county of Montgomery, being a part of the eleventh brigade of infantry, under command of Brigadier-General Averill. General Averill was directed to procure transportation for the troops by railroad, and move forthwith to the city of Albany to receive further orders.

A copy of the general orders in relation to the military companies of the city of Albany was transmitted to the sheriff by an aid-de-camp, who was also the bearer of a letter to the sheriff, informing him that measures had been taken to furnish him an additional force, and three companies of uniformed militia from Troy would immediately join him; that this force, in addition to

that then under his command, would enable him to proceed and test the reality of the threats which had been made; that it was a duty which the occasion imperatively required him to perform with decision and energy to serve the process in his hands, by arresting the individuals against whom he had warrants and attachments and by levying upon, and removing to a safe place the property of those against whom he had executions, and that his determination to perform that duty should be manifested by acts unequivocal in their character; that at the same time his persisting in these efforts must depend on the actual circumstances, and that whenever he should be satisfied, upon consultation with the principal officers under his command, that the persons appearing to resist were in such force, and so armed and arrayed that he could not succeed after making an effort, he would take a secure position and wait further directions; that preparations were made to send to his aid a force that would effectually suppress all opposition; and that a proclamation, addressed to the persons who were thus outraging the laws and defying the government, would be immediately sent to him, and he was directed to cause the same to be widely circulated.

On the same morning, Tuesday the tenth of December, I issued a proclamation, and with all possible despatch caused it to be extensively circulated among the people assembled for the purpose of resisting the sheriff.

On the same day, the tenth of December, I received information from the sheriff, at Clarksville, by a letter from aid-de-camp Col. Spencer S. Benedict, that there was a disposition on the part of the people not to resist the sheriff in his duty; that the fact of the troops remaining there during that day strengthened them in the opinion that an additional force was hourly expected; that the people had collected at Reidsville in large numbers, estimated at from twelve hundred to fifteen hundred persons; that they had two field-pieces, and that there were assembled at Clarksville from one hundred to three hundred persons.

The troops called into service from Rensselaer county, amounting to about one hundred and sixty men, arrived at Albany at twelve M. on the tenth of December, and were immediately furnished with two field-pieces, and ordered to proceed to join the troops at Clark's.

On the tenth of December, at 11 o'clock, P. M., I wrote to the

sheriff that I had seen no reason to vary the instructions previously sent; that he had probably been already joined by a reinforcement from Troy, and that a larger detachment was ordered from the west, and would join him the next day. I approved of his proceedings so far as they had been communicated, and desired to be informed, if he should at any time deem it necessary to have his force increased.

Major Bloodgood wrote at ten o'clock, A. M., on Wednesday the eleventh of December, that he was forming the troops under his command to proceed in the performance of their duty; that the force had made such an impression upon the inhabitants in that vicinity that he apprehended no danger with the force under his command, and that the troops would continue with the sheriff and enable the sheriff to execute process as they passed through the country. The major further stated that it would be unnecessary to send any more troops.

Brigadier-General Averill, with about five hundred men, arrived at Albany on the evening of the eleventh of December, and reported himself for orders. Provision was made for their comfortable lodging during the night. I reviewed them the next day, and having become satisfied that there would be no occasion for their services, I directed that they should be discharged from service on their return to St. Johnsville.

On Wednesday, the 11th of December, I received a communication from Azor Taber, Esq., and the Hon. Henry G. Wheaton, citizens of Albany, stating that several citizens of the towns of Bern and Westerlo of distinction and influence among those who had been the cause of the unhappy disturbances existing in the county, arising from resistance offered to the sheriff in the performance of his official duty, being desirous to end these difficulties by availing themselves of the occasion presented by the proclamation which had been issued, had called upon them during the preceding night, and authorized them to assure me that all resistance to the sheriff in the execution not only of civil process, but in the service of criminal process and attachments should be withdrawn, and that the assemblage of people, with a view to such resistance, was prepared quietly to disperse; that from their knowledge of the high standing and character of the individuals alluded to, and their agency in the direction of the movements which had taken place, Messrs. Taber and Wheaton

entertained no doubt that the most entire reliance might be placed upon these assurances, and that the pacific offers in the proclamation had been cordially embraced by those to whom they were chiefly directed, who would thenceforth "desist from their opposition, and would conduct and demean themselves as orderly, peaceable, and well-disposed citizens, justly estimating the invaluable rights they enjoyed, and knowing that the only security for the preservation of their rights consisted in the complete ascendency of the laws."

A copy of this communication was immediately transmitted to the sheriff at Rensselaerville, with a letter in which I stated to him that if it should appear as I confidently trusted, that resistance had ceased, and if the assemblage convened for that purpose should disperse, it would be the sheriff's duty to proceed in the execution of process without the military force; and he was directed, thereupon, to order the immediate return to this city of all the troops under his command, except a single company; that if he deemed it necessary, he would take with him five members of the remaining company, to attend him in the further performance of his duty; that, gratified by the evidence which existed that a spirit of obedience to the laws had triumphed over the rash counsels by which a portion of our fellow-citizens had been misled, I was desirous to mark my entire confidence in the assurances I had received, by the withdrawal of the troops at the earliest moment when it would be safe to do so.

Orders were at the same time issued to Major Bloodgood, informing him, that whenever it was rendered certain that the sheriff could perform his duty without being resisted, the major was required to return to this city immediately with the troops under his command; and Major Bloodgood was instructed to be especially careful, that no person under his command should offer any insult or injury to the citizens, or commit any breach of the peace; that it would be a most gratifying circumstance, if the supremacy of the laws should be established without the loss of life. Major Bloodgood was further assured, that his courage and military conduct had been proved, and that I now confidently relied upon his prudence.

On Thursday, the twelfth of December, I received a report from Major Bloodgood, dated at Rensselaerville on the eleventh at half-past eleven o'clock, P. M., stating, that on arriving with his

force at Reidsville on the eleventh, he met, as before, a large assemblage of people; that he halted on the hill at that place, and formed his force in solid column, and in that way marched in the midst of them, and again halted for the sheriff to do his duty; that the sheriff arrested one person and the military took him into their keeping. Major Bloodgood further stated that he was satisfied the military force had completely overawed the resisters, and that the sheriff would be enabled to effect the service of his process; that when the troops arrived at Reidsville they found the resisters assembled in great numbers, and that, with the view of preventing the troops from getting any shelter or accommodations, the resisters occupied all the barns, sheds, and public places; that he had ejected the resisters; that his course thereafter would be to continue his headquarters at Reidsville, and send with the sheriff a small armed force to assist him. The major further stated, that he had never seen regular troops perform better service, or more manfully endure the fatigue, exposure, and hardskips, which they went through during a severe storm on the first day of their march.

On the twelfth instant I received from the sheriff a letter, stating that he had served the civil process he had in his hands; had made a levy on property, and had served writs; that he thought he should be able to serve all the process which he had, provided he could find the defendants; and that the troops had behaved well and in the most soldier-like manner.

On the thirteenth, Major Bloodgood wrote that the sheriff and the troops had been very active, and that the sheriff had accomplished the service of his process; and the sheriff, on the same day, certified to me that the service of process had been so far accomplished, that the presence of the troops was no longer necessary, and that every purpose had in view in calling out a military force was effected.

The adjutant-general thereupon immediately proceeded toward Rensselaerville with orders that the troops should return to the city. He met the sheriff, Major Bloodgood, and the troops, at Clarksville on the fourteenth, Saturday evening, and, in pursuance of my directions, submitted to the troops my wishes that they would remain there until Monday; but my consent, that if they should deem the delay too inconvenient, they should return to the city on the next day. The troops returned to the city on

the next day (Sunday, the fifteenth), having marched twelve miles, through a deep snow, and during a storm of intense severity. I met them on their arrival in the city, and returned them my acknowledgments for their good conduct and patriotism.

On the sixteenth of December, general orders were issued, discharging them from service, and expressing to them in a more formal manner the high sense I entertained of their patriotism and good conduct.

Orders were also issued to the troops which had been directed to hold themselves in readiness in the city of New York.

I have thus submitted all the information in my possession on the subject of the resolution of the senate, and also copies of all the papers remaining in the executive department. The senate will permit me to recall to its recollection, that in my annual message at the commencement of the session, I submitted an account of the same proceedings. The statement then made, in the general view presented of the condition of the state, was necessarily brief. I am happy that the senate has afforded me an occasion to furnish more full information.

Immediately after the commencement of the session, the adjutant-general, by my direction, submitted to the committee of the assembly, on the militia and public defence, a bill for the payment of the troops who had been called into actual service, and at the same time laid before the committee copies of all the general orders demanded by the resolution of the senate, and of which copies are herewith sent, and the same are now remaining, as he informs me, before the legislature.

I beg leave to submit to the senate, that the citizen-soldiers who performed the service which has been described under circumstances of danger and privation, and of exposure to the most inclement weather, are manifestly entitled to the most liberal remuneration; that legislative action on the subject can not be long delayed without shaking the confidence of the militia in the justice of the state; and that, when that confidence shall become impaired, there will be much less alacrity than was manifested by the troops in question in obeying the call of the magistrate to sustain the civil authority.

Nor can I omit, on this occasion, most respectfully to renew the recommendation made in my annual message, that the legislature should take into consideration the causes out of which the

recent unhappy disturbances arose. Although the citizens of this county who were engaged in those disturbances mistook the remedy for the evils they endured, and adopted measures inconsistent with the peace and good order of society, yet it can not be denied that their complaints are well-grounded, and that legislative interposition in their behalf is required, not only upon considerations of justice and equality, but by sound and enlightened policy. Their petitions for relief from tenures oppressive, anti-republican, and degrading, are already before the legislature. I respectfully commend them to the favorable consideration of the senate.

NATIONAL BANKRUPT LAWS.

ALBANY, MARCH 17, 1840.

To the Legislature:

I submit the proceedings of a meeting of the citizens of the city of New York, held on the 27th of February last, in relation to a national bankrupt law.

The founders of the constitution of the United States seem to have enjoyed prophetic views of the development of the resources and of the ultimate destiny of our country. They anticipated that we should become a commercial nation, and conferred upon Congress ample powers to provide for every vicissitude which must happen to a commercial people. It is to be regretted that Congress has not in all cases exercised these powers in the manner best calculated to sustain the commercial interests, and promote in the greatest degree the general welfare of the country. The most striking instance of the neglect of an important constitutional duty by the general government is found in the omission "to establish uniform laws of bankruptcy throughout the United States." Until recently, commerce has prospered notwithstanding this neglect; and the misfortunes and embarrassments of individuals which might have been prevented or relieved by the operation of such laws have not been observed to affect the general welfare or arrest the public attention.

A different state of things now exists. A pressure of unexampled severity prevails throughout the length and breadth of the land. A rapid depreciation has taken place in the prices of labor, of mechanical and agricultural productions, and of real estate. The foreign and internal trade of the country are alike paralyzed. Domestic exchanges are deranged, the currency of the several states is without approximation to uniformity, individual credit scarcely exists, and the credits of the states them-

selves suffers under interested attacks of foreign capitalists, encouraged by the demonstrations of greater distrust in the councils of the general government.

It is obvious that the first measure of relief from these evils would be the restoration of a sound, equal, and uniform currency. Unfortunately the action of Congress furnishes no ground to hope for the adoption of such a measure at the present session. The desire long manifested, and which still lingers in the national councils to reduce to a European standard the value of American labor, will not permit at present the restoration of a currency, through the operation of which domestic enterprise has found ample employment, and immigrants have been attracted hither from every country in Europe. The people, however, may apply the remedy, when the recurrence of congressional elections shall furnish an occasion for the expression of their will.

In the meantime, the citizens of New York, whose proceedings are herewith submitted, indulge the hope that Congress may be moved to grant, during the present session, such relief from existing evils as a system of uniform bankrupt laws would afford. It must be confessed, nevertheless, that this hope derives its existence rather from the general consent of our fellow-citizens concerning the necessity of the measure in the presect exigency, than from any indications of favorable action on the subject in the national legislature.

But the wisdom, justice, and expediency of a national bankrupt law, are unquestionable. There is no moral justice in holding under perpetual and hopeless constraint the debtor, who, having contracted his debts without fraud, voluntarily relinquishes and surrenders to his creditors, when he is overtaken by unforeseen calamities, all the property he has in any manner acquired. Happiness is not so prodigally bestowed upon our race as to warrant any government in depriving a large portion of its citizens, for a single instance, or even for repeated instances of misfortune, of the means to provide effectually for the education and maintenance of their families.

The creditor so seldom derives any advantage from the power he retains over the insolvent debtor, who has honestly surrendered all his property in satisfaction of his debts, and the obstinacy of one creditor so often defeats all effort for compromise advantageous to all parties, that society is without any equiva-

lent for the privation of the labor and enterprise of that class of citizens.

Credit is necessarily and hazardously increased by expectations on the part of the creditor of ultimate power of coercion or control over the debtor, the exercise of which must be fruitless to the creditor, and productive only of wretchedness to the debtor and his unoffending family.

These principles are now so universally acknowledged, that they are recognised in the codes of all civilized countries, and are especially established in the legislation of every state in the Union. Yet while the commercial operations of our citizens extend throughout the Union, and relations of debtor and creditor are freely assumed without reference to the boundaries of states, the neglect by Congress to establish uniform laws of bankruptcy, very often leaves the debtor without effectual relief, notwithstanding his surrender of all that he possesses for the satisfaction of his creditors. The power of a state to absolve its citizens, under any circumstances, from debts to citizens of other states, is more than questioned at home, and while the constitution expressly declares, that citizens of one state shall be entitled to all the privileges and immunities of citizenship in other states, the citizen humanely and wisely discharged at home, is debarred from seeking by emigration, the poor man's last hope, to improve his condition under more favorable auspices in any other part of the republic. Besides all the personal and domestic infelicity thus produced, it is obvious that this evil tends to create and sustain alienation of feelings, sympathies, and interests, among the citizens of the several states, who have not only one commerce, but one country, one ancestry, one constitution, and one destiny.

Entertaining these views, I heartily commend the proceedings of the citizens of New York, in relation to a general bankrupt law, to the favorable consideration of the legislature, in the hope that the subject may be deemed worthy of being presented by legislative instruction and advice to the senators and representatives of this state in the Congress of the United States. And I press the subject more earnestly, both because the peculiar misfortunes of the present time are greatly increasing the number of those unfortunate citizens who require the interposition of the national legislature, and because there can be little hope of stimulating the action of Congress on the subject at a future

time, if the constitutional provision authorizing the establishment of uniform bankrupt laws shall be suffered to remain a dead letter, through such a conjuncture as the present, and until the misfortunes which have now so widely and so deeply excited the public sympathy shall be forgotten in the return of general prosperity.*

* The legislature concurred in the views presented in this communication, and transmitted instructions to the representatives of the state in Congress. Governor Seward's advocacy of a uniform national bankrupt law commenced in the senate in 1832.—*Ed.*

VETO MESSAGE.

THE CHILDREN OF ALIENS.

ALBANY, MARCH 20, 1840.

To the Senate:

I have had under consideration a bill entitled "An act for the protection of minors," which originated in the senate, and which has passed both houses of the legislature.*

The father is recognised as the natural guardian of his children by the laws of this state, and of all Christian countries. The duty of providing for their maintenance and education falls upon him, and he is entitled to the custody of their persons, and to the solaces of their society. But the father may forfeit his right of guardianship by neglect or violation of his conjugal duties, or by conduct which renders him an incompetent or improper person to support or educate his child. In such cases, the mother is entitled to the custody of the child; the supreme court may, on her application, commit the child to her care, and the chancellor may decree a provision out of the father's property for its support.

The bill under consideration proposes to deprive alien fathers of their natural right of guardianship in certain specified cases. Those cases are, where the father, being an alien, and the mother and child American citizens, the father "shall attempt or threaten to carry the child into a foreign country, without the consent of the mother, or her next of kin, if she should not be living," and "where the chancellor shall be satisfied that the welfare of the child would be promoted" by its being retained in this country.

* It has been understood that the bill thus returned was hastily passed, from motives of sympathy with an American lady, who had formed an unhappy connection with a gentleman in Switzerland, and had taken refuge, or desired to take refuge, in this state. The parties were Mons. and Madame D'Hauteville. No proceeding in the bill was had in the legislature after the veto message was received.—*Ed.*

Stated in a more simple form, the effect of the bill is, that if an alien father shall, in any case whatever, attempt or threaten to carry his own child to his own country, without the consent of its mother, he shall thereby forfeit his natural right to determine what is expedient for his child's welfare, and the chancellor shall be substituted in his place with power over his property, to make such provision as the chancellor shall deem expedient and suitable for the maintenance and education of the child.

I confess it does not seem to me that the natural wish of an alien parent, who is obliged, or who deems it his duty or interest to return to his native land, to carry his child with him is so immoral that it ought to work a forfeiture of paternal rights. It may at least in some cases, if not always be presumed, that the father obeys laws of nature, stronger and more sacred than all human laws. Natural affection is not peculiar to American parents, nor does it cease to burn in a father's bosom because a sea has intervened between him and his native land. If it would not be unnatural, nor necessarily immoral, for an American sojourning in a foreign country to attempt or threaten to bring home his child, against the wishes of its mother, it can not be unnatural or immoral for an alien father residing in this country, under similar circumstances, to assert the same right.

The bill manifestly contemplates a case of separation or alienation between the father and mother of the child. What are the wife's rights under existing laws? If the husband violates or neglects his conjugal or parental duties, she may obtain a separation. If he does not thus forfeit his conjugal or parental rights, she is bound both in law and duty to attend him, wherever his fortune may oblige him to seek a residence, and to afford him the solace of her own society, as well as that of his children. It has been supposed to be essential to the public morals, and to the domestic happiness of families, that separation of husbands and wives, for light and trivial causes, should not be encouraged. It is not necessary to contend against an enlargement of the wife's privileges. It is probable that the superior influence and power of the male sex, are manifested as well in the legislative construction of the religious contract of marriage, as in the judicial expositions of it. I doubt not that many a case exists of injury, oppression, and domestic tyranny, unredressed, and even uncomplained of. I shall certainly be the last to resist any modification

of the laws which the legislature may deem adapted to secure to married women a more faithful discharge of the obligations of the marriage contract, the better preservation of their just rights, and the security of their property. But the bill in question contemplates no such modification of the laws. It applies only to alien husbands, and to cases where the wife, being a citizen, refuses to consent that her child be taken by the father out of the country, a refusal which, from the circumstances of the cases, always follows her refusal to accompany her husband personally. Undoubtedly cases occur where an alien husband unreasonably and arbitrarily requires a wife to leave her native country, and expose herself and children to the vicissitudes of fortune in a strange land. But on the other hand, there may be instances in which a wife may unreasonably or capriciously refuse to abide the fortunes of a faithful husband in the country to which he belongs, and where his interests and duty may require him to reside. While it might be just and reasonable that the wife's wishes should prevail in the former case, it would be manifestly wrong that her perverseness should be encouraged in the other. Unfortunately the bill before me makes no distinction between these cases, and the perverse and delinquent wife may, equally with her who is injured or neglected, carry the domestic controversy into the court of chancery. It may be answered that the chancellor is not authorized by the bill to interpose, except in cases where the welfare of the child will be promoted thereby. This saving clause, however, seems to me insufficient to protect the father in his just and natural rights. It does not clearly appear what is meant by the welfare of the child. Is it welfare in respect to fortune or rank? Certainly neither of these circumstances can weigh against that higher welfare, which is promoted by parental care of the health, and of the moral, intellectual, and religious education of the child.

Again, I can not believe that the chancellor would be a more competent judge of what would promote a child's welfare than its virtuous and unoffending parent, even though that parent should be a foreigner. Chancellors are not exempt from human infirmities, and it can not be supposed that they acquire feelings of parental affection and tenderness toward the many thousand children of misfortune whom the destitution or depravity of parents cast upon their care. Nature designates the parent as

the judge of what will promote the welfare of his child, and endows him with the patience, the assiduity, and the affection necessary for the right discharge of his trust. Human legislation must always fail in efforts to excel Divine institutions.

How can the chancellor determine whether a removal of the child to the country of its forefathers will promote its welfare, but by evidence of the comparative advantages to be enjoyed in both countries? The alien father knows the advantages of both; the chancellor can not know them better, nor decide between them with half the anxious solicitude for the child's welfare.

But it is not necessary to insist upon these objections. There is another which seems to me conclusive against this bill. If the principle of the bill be right in regard to foreigners, it must be equally so in regard to native citizens. Yet, who would not revolt at the idea that the chancellor should have the power to enter the family circles of our citizens, and, without convicting the father of neglect or omission of duty, overturn paternal authority, and separate helpless children from unoffending parents upon the arbitrary pretext of promoting the children's welfare? Would it not be an intolerable evil, if the chancellor, having thus separated the father from his child, should at his pleasure exercise his power over the property of the parent, and, in the language of the bill before me, "make such order in regard to the custody, property and maintenance of such minor, as may be made in cases of incompetency, or disqualification of a father to have the charge of the person, property, or education of his minor child."

It is both right and natural that the legislature should extend its protection to American women who have intermarried with aliens. But it does not seem necessary to extend to them greater privileges than those enjoyed by their countrywomen, who are wives of our own citizens. Alien husbands and fathers ought to be subjected while residing here, to the control of our laws. But it is inconsistent with the spirit of the age, and the genius of our institutions, to have one system of laws for our own citizens, and, like the Chinese, a different and more severe code for foreigners. On the other hand, enlightened policy and national magnanimity alike dictate that, in regard to the laws which govern the domestic relations, there should be equal justice and equal favor shown to our own citizens, and to foreigners sojourning among us. In

the marriage contract, if made in this country, the American wife of an alien submits herself to the existing laws, and her rights are the same as are enjoyed by her countrywomen. If the marriage contract is formed in another country, it is unjust and discourteous to the nation to which the husband belongs, to deprive him, because he is an alien, of rights which follow the marriage contract in his country, as well as in our own.

It has not been without much solicitude that I have thus submitted to the senate my objections to the bill. They are such as arise upon the face of the bill itself. I have looked without success among the legislative documents of both houses for any report, petition, or other paper, which might show a necessity for the passage of the law, or explain the views of the legislature on the subject.

Entertaining habitually a profound respect and deference for the opinions of the legislature, and deprecating the exercise of the prohibitory power of the executive, except upon most grave occasions, I can not now exercise that power without assuring the senate, that, distrusting my opinions where they differ from those of others, I shall not permit myself to doubt the wisdom of the decision of the legislature, when it shall have reviewed the subject, whatever that decision may be.

SUPPRESSED VETO MESSAGE.

REGISTRY OF VOTERS IN THE CITY OF NEW YORK.

ALBANY, MARCH 27, 1840.

To the Senate:

I return with objections a bill, which originated in the senate and has passed both houses of the legislature, entitled "An act to prevent illegal voting in the city of New York, and to promote the convenience of legal voters."

No one deplores more sincerely than I do the frequent abuses of the elective franchise. It was my fortune to come to the executive magistracy by an election when loud complaints of that evil were made. At the same time, alleged violations of the franchise in Pennsylvania threatened to involve that commonwealth in civil commotion, and abuses of the same right had recently occurred in New Jersey, which have resulted, during the present session of Congress, in a memorable infraction of the constitution of the United States. Alarmed by these events, I called the attention of the legislature, in my first annual message, to the necessity of guarding the elective franchise. I signed with great pleasure the act passed at the last session, in pursuance of that suggestion, entitled "An act to preserve the purity of elections." Beneficial as that law was, it nevertheless is, or is supposed to be, inadequate; and under that belief I submitted the subject again to the consideration of the legislature at the present session. Under such circumstances, I could not but deeply regret that there should be occasion for dissent from that body concerning the remedy for the evil in question.

I highly approve those parts of the bill which direct a division of the wards into election districts, and prescribe regulations for conducting elections. My objections are to those provisions

which direct a registry of voters. My opinions concerning the principle of a registry have not been suppressed, but were early made known to a committee who visited the capital to solicit the adoption of such a measure.

The bill would devolve the duty of registering the names of electors on commissioners, while those officers would not be required to take the constitutional oath of office.

The bill provides that the commissioners may insert at pleasure the names of voters at a public meeting to be held in September. Omissions may be afterward supplied, if the electors shall demand to be registered and shall take the oath of qualification prescribed by law. But, on the other hand, if the commissioners insert improper names, there is no provision for challenge until October, when the list shall be completed. Challenges may then be interposed indiscriminately to all the names on the registry, as well to those entered on demand and oath as to those recorded at the pleasure of the commissioners. This right of challenge might be exercised with a view to harass and embarrass the voters and defeat an election; and in that manner all the voters in the city might be challenged. There must be delays to procure witnesses and try issues on the constitutional rights of the many who would be challenged. No record of the proofs on these issues is to be kept, nor of the adjudications by the commissioners thereon, although their decisions would be final. Thus the bill would encumber the right of suffrage with a semi-judicial process, regulated by no forms, and subject to no review.

The 10th section prescribes that the commissioners shall, during the days of the election and the previous day, grant a certificate of registry to any person who shall prove, by at least one known voter of the ward, that such person is a legal voter, and has become a voter in such ward since the registry was completed, or has been prevented from applying to be registered by prolonged illness or absence. It is probable that when the register should have been made and published, the tendency of the public mind could be easily ascertained. Parties would then strive to maintain or recover ascendency by including new residents of the ward, and sick and absent voters; and an approver of qualifications could be easily obtained when the value of the vote offered should be thus fully understood.

By the 10th section, an undefined and unregulated power

would be vested in the commissioners to revise the register during three weeks prior to the *charter* election, and to make such erasures, alterations, and additions, as might become necessary. In regard to this proceeding, the bill requires no oaths, no proofs, nor even publicity, while no appeal is allowed. Such an enactment would put the charter election in the hands of the commissioners. These objections relate to the details, not to the principle of the bill.

I am well aware that it is a difficult task to frame a law for regulating elections. Our present system has been matured during the history of the state, and yet it has many imperfections.

The title of the bill manifests a legislative intention to promote the convenience of voters. The inconveniences to be remedied are understood to be difficulties of access to the polls, hinderance in voting, and exposure to insult and violence. It seems to me that these inconveniences would be effectually removed by subdividing the wards and holding the elections on one and the same day; while the bill under consideration would subject voters to unnecessary difficulties, hinderance, and exposure, preparatory to the registry. These inconveniences would fall most heavily upon those least able to bear them. The time lost by the poor man is measured by a diminution of wages, or perhaps by a subtraction from the comfort of his family.

The present constitution rests upon the basis of free, uncontrolled, and universal suffrage. Colonial restraint and relations, prejudice, and the influence of power, retarded this principle until the convention of 1821, and it was then established imperfectly, though not without conflict. But the few limitations of the right left in the constitution were removed by amendments in 1826. The state has been as wisely governed, the rights of every citizen have been as safely enjoyed, and the people have been as prosperous and happy, since that time, as when none but freeholders and tenants of a certain class exercised exclusive suffrage for a portion of those intrusted with the responsibilities of government. In adopting this principle of universal suffrage, the attention of the convention was directed to the question how the right of the elector should be ascertained. From time immemorial, the test had been the elector's oath, administered on

demand of any other citizen at the polls, and under the pains and penalties of perjury. A preliminary registry of voters was proposed in lieu of that time-honored test, and was rejected upon the grounds, as far as ascertainable, that a full and fair registry would be impracticable, and that enactments for such a purpose would embarrass the citizen in the exercise of his constitutional right. A registry test would have had advantages then which it could not have now. Then, none were voters who did not pay taxes, or perform highway labor or military service. Rolls of such persons were necessarily prepared, and would have been a basis for a registry. Then, rolls could not have been falsified, nor could any fraud have been practised in regard to them without exposure. We can now have no such aids and checks.

The spirit of the constitution obviously requires that the test of electoral qualifications shall be uniform throughout the state; and that the laws which the legislature may pass to ascertain the qualifications of electors shall be uniform, or at least equal in their operation. The exclusive application of the bill to the city of New York seems to conflict with this principle, by imposing upon the elector there a burden from which his fellow-citizen in any other part of the state is exempt; or if the bill would promote the convenience of electors, then its benefits should be extended throughout the state. Again, the city of New York, as a portion of the state entitled to representation in proportion to its population, has a right to require that as much scrutiny shall be exercised in regard to the qualification of electors in other districts as in the city.

Whatever other results may be anticipated, it is certainly expected by those who advocate the bill, that it will reduce the number of votes polled in the city of New York; and in my view it will accomplish that result, not so much by preventing illegal voting as by hindering legal voters. I regard the exclusion of one legal voter as a greater evil than the admission of more than one who is unqualified. I indulge no fear of danger from the broadest extension of the franchise. Universal acquiescence in the laws, and loyalty to the government, are secured by the extension; and that acquiescence and loyalty are a guaranty against such dangers as have disturbed or overthrown all other forms of government.

In returning the bill without my approval, I do so under a firm belief that the registry proposed would disappoint all the expectations indulged, and lead to frauds and vexations of suffrage which would, at an early period, induce its repeal, if it should become a law.

NOTE.—This message was suppressed at the vehement solicitations of Governor Seward's friends in the city of New York, in opposition to his own judgment. His prediction of the early repeal of the law was signally verified at the next session of the legislature.—*Ed.*

NEW YORK REGISTRY LAW.

ALBANY, MARCH 30, 1840.

To the Senate:

Gentlemen: I have this day approved and signed the bill entitled "An act to prevent illegal voting in the city of New York, and to promote the convenience of legal voters."

In making this communication, I deem it my duty to inform the legislature that a careful examination of the bill has induced a belief that there are defects in its details, without the correction of which the laudable purposes of the legislature may fail to be accomplished. It is evidently the intention of the legislature, that the law shall go into effect immediately, so as to apply to the charter election* in the city of New York, which is to be held within the ensuing fifteen days; and inasmuch as no defects are found in any provision which can affect that election I have given my approval. There will be sufficient time to make any amendments previous to the adjournment of the legislature.

* The provision requiring a registry of the voters did not apply in the case of the charter election.—*Ed.*

THE VIRGINIA CONTROVERSY.

ALBANY, APRIL 11, 1840.

To the Legislature:

I transmit a communication from the governor of Virginia, containing the proceedings of the legislature of that state, concerning the requisition heretofore made upon me for the delivery of Peter Johnson, Edward Smith, and Isaac Gansey, as fugitives from justice.

I observed, in my annual message, that the subject was one which fell within the province of the executive department, and that the duties of that department were enjoined by the constitution and laws of the United States, and not by the constitution or laws of this state; yet that the respect I entertained for the executive of Virginia, and the deference I owed the legislature of this state, induced me to lay before you the correspondence which had taken place on this subject. The proceedings of the general assembly of Virginia, manifest a desire to obtain the sense of the legislature on the subject. I therefore commend the proceedings of the general assembly, and the communication of the governor of Virginia, to your respectful consideration, and shall defer my reply, in the hope that I may be aided by the superior wisdom of the legislative department. Altogether willing that the opinion of the executive, and of the general assembly of Virginia, may be considered under the most favorable auspices, and that my own may be subjected to the most rigid examination, I transmit herewith a report of a committee of the general assembly of Virginia, in which the subject is ably discussed.

Note.—The legislature sanctioned the course of Governor Seward in this matter. —*Ed.*

PROCLAMATION. THANKSGIVING—1840.

God has been pleased to preserve our lives during another year, and to bless our land and make it very plenteous. Health, peace, and liberty, have dwelt among us, and religion has ministered her divine counsels and consolations. No danger has menaced us from abroad, nor has any alarm of intestine commotion, sedition, or tumult, disturbed the quiet of our dwellings. The clouds have not withheld from the earth their timely rain, nor the sun its genial heat. The plough has not been stayed in the furrow, nor has blight or mildew diminished the abundant harvest. We have exhibited to the world the sublime spectacle of millions of freemen, carefully discussing the measures and policy which concern their welfare, and peacefully committing the precious trust of their interests and hopes to the care of chosen magistrates. While our confidence in the stability of republican institutions has thus strengthened, their benign operation has been manifested in the sway of mild and equal laws, the enjoyment of equal privileges by all classes of citizens, the security of personal rights, and the intellectual and moral improvement of society.

In remembrance of these signal and manifold blessings and privileges, it becomes us to lift up our hearts and ascribe all the power and glory to Him who looketh down from heaven and considereth all them that dwell upon the earth. I do, therefore, in pursuance of a custom sanctioned by the people, set apart and appoint Thursday, the seventeenth day of December next, to be observed throughout this state as a day for the annual offerings of praise, thanksgiving, and prayer. I respectfully recommend to my fellow-citizens to abstain from all secular occupations on that day; to gather themselves in their solemn assemblies; to render to our heavenly father the homage of hearts softened and warmed

by his unbounded goodness; to commit to his tender care the poor, the neglected, and the oppressed, and to supplicate a continuance of his favor to this people throughout all generations. However we may be separated by opinions or associations, all the citizens of the republic have equal political rights, and have the same motives to desire its peace, happiness, and perpetual prosperity. The church of the living God is one, and embraces all those who in humility of spirit receive his holy faith, and endeavor through Divine aid to keep his commandments. Let us, therefore, in perfect harmony and charity, one with another, as patriots and Christians, implore Him to sustain and bless all our civil and religious institutions, and to dispense to us abundantly that heavenly grace which, with faith in the Lord Jesus Christ, leads through the way of virtue here to the blessed society of the redeemed in his everlasting kingdom.

REMOVAL OF THE RECORDER OF NEW YORK.

ALBANY, JANUARY 12, 1841.

To the Senate:

Gentlemen: Robert H. Morris, recorder of the city of New York, proceeded in the month of October last, in the night-time, to the house of a citizen, and demanded of him certain papers which were sealed in a package and had been delivered to that citizen by an individual against whom a criminal complaint had been made before the recorder, which complaint did not involve the charge of having unlawfully obtained the papers so demanded. The citizen hesitated to deliver the package. The recorder then declared to him, that if he did not deliver the same, he, the recorder, would search for the papers and forcibly seize them, by virtue of his authority as a magistrate. Under the coercion of this threat the papers were delivered to the recorder.

Soon after these proceedings a court of general sessions of the peace was held in and for the city and county of New York. The recorder presided in that court, and a grand jury was there empanelled. Upon that grand jury devolved the responsibility of inquiring into the conduct of the recorder in the proceedings which have been described. The recorder in charging the grand jury spread before them a defence and vindication of his conduct in those proceedings, and urged that the same were just and sanctioned by law. After very mature deliberation on the subject, I am satisfied that in the case in which the proceedings occurred any search-warrant for the private papers of the accused, which papers were not alleged to have been feloniously stolen or unlawfully acquired, would have been a violation of the

Note.—The grave legal questions involved in this proceeding are luminously discussed in a report submitted to the governor by the Hon. Willis Hall, attorney-general, Jan. 11, 1841.—*Ed.*

most sacred private rights, and of the most cherished principles of civil liberty, and that the seizure of the papers in such a case by a judicial officer, without warrant on oath, was more aggravated than the issuing of a search-warrant would have been, because it was a mixture of judicial and executive functions, derogatory from the station of the judge and dangerous to the personal rights of the citizen. In availing himself of his station as a judge to defend and vindicate his conduct before the grand jury, who by law could receive testimony only on behalf of the people, and hear only their counsel, the recorder obtained an improper advantage, denied to all other citizens in similar circumstances, and furnished an example to other judicial officers, which if permitted to pass without censure, may become a precedent of alarming tendency.

I do, therefore, for the causes above stated, recommend that Robert H. Morris be removed from the office of recorder of the city of New York.

The evidence before me in regard to the proceedings referred to, consists of the charge of the recorder as published in various newspapers in the city of New York.

On the 29th day of December last, in anticipation of your meeting, I transmitted to the recorder a communication, a copy of which, together with a copy of his acknowledgment of the receipt of the same, is herewith laid before the senate.

Should a further communication, pertinent to the subject, be received from the recorder, it will be transmitted to the senate.

I transmit also herewith a copy of the charge made by the recorder to the grand jury.

I nominate Frederick A. Tallmadge of the city of New York to be recorder of the said city in the place of Robert H. Morris.

THE VIRGINIA CONTROVERSY.

ALBANY, MARCH 26, 1841.

To the Legislature:

I transmit resolutions of the legislature of Mississippi, concerning the decision of the executive of this state declining to comply with a requisition made by the lieutenant-governor of Virginia, in 1839, for the surrender of certain persons represented to have been fugitives from justice, charged with the constructive offence of stealing a negro-slave. I avail myself of the occasion to lay before the legislature certain other proceedings affecting the same question.

On the 24th of February last, I issued a requisition to the executive of Virginia for the surrender of Robert F. Curry, a fugitive from justice, charged with an aggravated crime of forgery. His excellency the governor of Virginia, in his reply, admits the regularity of the requisition, and acknowledges that the fugitive has been arrested, and is in actual custody in that commonwealth, upon the charge contained in the requisition. Nevertheless, he deems it proper to make his compliance with the requisition depend on a reversal of the decision heretofore made by the executive of this state in the case before referred to, and to detain the fugitive in custody six months, to afford time to the executive of this state to reconsider that subject.* By the documents transmitted, it will be seen that I have deemed it my duty, under these extraordinary circumstances, to inform the governor of Virginia without delay, that the decision in question can not be reversed.

* The house of delegates of Virginia expressed their disapprobation of this proceeding, and the decision of the executive of Virginia was, therefore, reversed, and the fugitive demanded by the governor of New York was surrendered. Thereupon the governor of Virginia immediately resigned.—*Ed.*

It appears from the public prints, and is undoubtedly true, that an act has been passed by the legislature of Virginia, designed to subject vessels owned or navigated by citizens of this state and departing from Virginia, to inspection, and attempting to impose other onerous and offensive restrictions upon citizens of this state carrying on commerce with the state of Virginia. It is understood to be among the provisions of this law, that it shall take effect after the first day of May, 1842; but that his excellency the governor of that commonwealth, may suspend the operation of the same until the end of the succeeding session of the legislature of Virginia, whenever he shall be officially informed that the executive of New York has consented to surrender the supposed fugitives before mentioned, and that the law of the state of New York, passed May 6th, 1840, entitled "An act to extend the right of trial by jury," has been repealed. A copy of that act of the legislature of Virginia, as contained in the public prints, is herewith laid before you.

It will belong to the legislature to decide whether the law that seems to have given offence to the legislature of Virginia shall be repealed: but I trust it will not be deemed improper for me to state, that although I supposed the privilege of trial by jury was already effectually secured to persons claimed as fugitive slaves without the passage of the act in question, and therefore believed it unnecessary, yet I cheerfully deferred in that respect to the better judgment of the legislature, and approved the law, the repeal of which is thus demanded. In my judgment, the law could not now be repealed, and especially under the singular circumstances presented, without raising a presumption that the legislature intended to deprive our own citizens, or other persons claimed as fugitive slaves, of the right of trial by jury. Believing that the right is invaluable as a protection to personal liberty, is peculiarly proper in cases where persons are exposed to the loss of liberty without even a charge of crime, and that it is important to every human being within our jurisdiction, in proportion to the humbleness and defencelessness of his condition, I can not recommend the repeal of the act. If it became my place to speculate concerning the probabilities of legislative action, and if I supposed as I certainly do not, that any disposition existed in the legislature to repeal the act, I should deem it my duty to remonstrate against the measure.

Unwilling to leave any ground for an expectation in regard to the executive of this state, that convictions of duty which have prevailed, notwithstanding the very elaborate arguments presented by the executive and legislature of Virginia, can be removed by any injurious measures adopted by that state, I deem it proper to repeat, in the most solemn manner, that the humble individuals who are pursued by the governor of Virginia as felons, for the offence of being seamen on board a ship in which a negro had secreted himself in order to escape from slavery, if they yet remain in this state, are under the protection of its constitution and laws, and can not be surrendered to the state of Virginia by executive authority, on the pretence set up for that purpose, without a deliberate violation of both, and that this conviction, adopted after most mature and impartial deliberation, and strengthened by subsequent reflection, is in no degree affected by the recent proceedings of the authorities of Virginia.

Without intending any disrespect to the state of Virginia, and cheerfully leaving its authorities to adopt all such proceedings as may seem to them right and proper in regard to the subject, I avail myself of the occasion to declare that measures of retaliation, injury and reprisal, are deemed equally unworthy the dignity of this state and inconsistent with its federal relations. The executive of this state, therefore, will not, although such a course has the sanction of the example of his excellency the governor of Virginia, offer large rewards to induce persons to seize, within the jurisdiction, and in violation of the laws of Virginia, fugitives from the justice of this state, whose delivery to the authorities of this state has been refused by the executive of Virginia, but will be content to put forth the legal powers with which the chief magistrate is intrusted. The executive of this state will not appeal to supposed interests and sympathies in other states, and attempt to combine one portion of the Union against another, but will cheerfully abide for his cause the test of time and free investigation. The constitutional demands of the executive of Virginia, upon the executive of this state will in all cases be allowed as fully as if the governor of Virginia had met his own obligations in the same manner, nor will measures of retaliatory legislation be recommended. On the contrary, the executive of this state, confiding in the constitution and laws of the United States, as affording ample remedies for any injuries the citizens of this

state may suffer from unconstitutional proceedings on the part of the state of Virginia, is satisfied that it may be safely left to the magnanimity of Virginia, and her own experience of the injurious consequences of those proceedings, to secure an early relinquishment of them, and a due acknowledgment and performance of all her constitutional obligations.

NOTE.—This case is further discussed in several letters from Governor Seward to his excellency the governor of Virginia.—See "Official Correspondence," page 449 of this volume.

DEATH OF THE PRESIDENT OF THE UNITED STATES.

ALBANY, APRIL 6, 1841.

To the Legislature:

It has become my painful duty to announce to the legislature the death of William Henry Harrison, the president of the United States.

This event brings a form of trial through which our constitution has not yet passed. It would at any time have been a national calamity, and under the circumstances now attending the sad event, it can not but be regarded as a fearful visitation of Divine Providence. The chief-magistrate has been removed at the very commencement of his constitutional term of public service, at a moment when he was preparing to meet the Congress of the United States, at a session called in an extraordinary exigency of public affairs, and in a crisis which demands all the wisdom, firmness, and patriotism of our rulers.

It becomes us as a people to humble ourselves before Him in whose hands are the destinies of the nations of the earth, to acknowledge the justice, although we can not comprehend the wisdom, of his providence, and to implore him that the favor and protection we have hitherto enjoyed may not now be withdrawn.

The legislature will, it is presumed, adopt some form for the expression of the sympathy of the public authorities of this state with their fellow-citizens, and their respect for the deceased; although all must feel that public honors are as unavailing to assuage a nation's grief, as they are superfluous to perpetuate the wisdom and the virtue of the great and the good.

Note.—William Henry Harrison, president of the United States, died at the city of Washington, on 4th of April, 1841. The legislature paid all proper honors to the memory of the deceased.—*Ed.*

JUDICIAL ABUSES OF THE NATURALIZATION LAWS.

ALBANY, APRIL 19, 1841.

To the Legislature:

An application has been made by citizens of Madison and Onondaga counties for the removal of the honorable Edward Rogers, first judge, and Joseph Clark and Epenetus Holmes, judges of the county courts of Madison county.

The petitioners allege, as causes for removal, that the judges at the last October term of the court of common pleas, illegally and with knowledge, naturalized forty aliens who went to the court from Onondaga county. They state that, by the laws of Congress, it is required that the applicant for naturalization shall have declared, on oath or affirmation, before a court of record, two years at least previously to his application, that it was his intention to become a citizen of the United States and to renounce his allegiance to all other governments, and that such a preliminary declaration is required in all cases, except that where an alien applicant arrived in the United States before the 18th of June, 1812, and has continued to reside therein, and where, being a free white person, he shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and five years, including the three years of his minority, he may, under certain regulations specified in the acts of Congress be admitted without having made the declaration required by the act of 1802.

The petitioners represent that none of the forty individuals came within the exceptions; that they had never made a previous declaration of their intentions, nor was any proof of that kind given by them or required by the court; that they produced no evidence of any kind, except an affidavit of five years' previous residence in the United States, and one year in this

state; that even this proof was, in some instances, dispensed with; and that, although the act of Congress requires that the evidence produced shall be satisfactory to the court, they did not, in much the largest portion of the cases, if any of them, look into the evidence, but left the whole matter to be managed and disposed of by the clerk.

The petitioners by way of showing that the judges knew the law, and acted wilfully and corruptly in the premises, allege that before the forty persons referred to applied, the court had already without objection, admitted one hundred persons to citizenship in the same improper manner; that after those one hundred persons had been thus admitted, and when application was made by the forty persons who came from Onondaga, a letter from James R. Lawrence, esquire, counsellor at law, was shown to the judges, referring to the various acts of Congress, and distinctly showing them that their mode of proceeding was in violation of law; that Talcott Backus, one of the judges, after receiving the letter, expressed to his associates a decided conviction that the letter contained a true exposition of the law; and that three counsellors then in attendance, declared to the court that their proceedings in naturalization were illegal, and produced and offered to read the various acts of Congress on that subject, but that the judges refused to read the acts or hear them read. These charges were sustained by depositions annexed to the petition.

A copy of the petition and of the depositions was transmitted by the executive to each of the judges, with a request that their replies to the charges might be received at their earliest convenience. Answers to the charges have been submitted. The answers are evasive, imperfect, and inconclusive. The judges do not maintain that by the laws of Congress aliens can be admitted to naturalization (except in the cases specified by the petitioners), without proof of their having made a declaration of their intention two years before their application for admission to citizenship, nor do they controvert the construction of the statutes assumed in the charges. If the parties accused were not judges, and if the accusation did not necessarily involve the legality of their proceedings, there might be some excuse for this extraordinary evasion.

The acts of Congress are explicit. The court was bound to

require from every person who applied to be naturalized, evidence, not only that he had resided five years in the United States, but also that he had, at least two years before, filed a declaration of intention, or else that he came into this country before 1812, or before he was eighteen years of age, according to the exceptions specified in the statutes.

The number which it is complained were admitted without the necessary proof is forty. It is to be hoped that the want of directness in the answer of the first judge on this point was unintentional. He says: "The number naturalized I do not know, nor have I ever inquired." Again he says: "I am not informed and do not know the name of a single individual who was naturalized at the last October term of the Madison county courts. The residence of two individuals only is known to me, and those were residents of my own town, and had previously filed their certificates of intention and made their declaration the prescribed time before, as I was informed. No case, to my knowledge, was presented to the court, and no individual was challenged as to his proofs, within my recollection and belief. It is true, I was occupied in the trial of causes, and would not notice anything in relation to this practice as soon as others of the bench."

It is worthy of remark, in the first place, that the judge, in answering charges supported by oath, has not thought it important to verify his reply by his oath, and that consequently even the cautious and evasive statement above extracted is to be taken upon the word of the accused. The judge is not informed and does not know the name of a single individual who was naturalized at the October term. This seems an extraordinary answer to be made by the first judge, when the name and residence of every person naturalized at the October term are recorded in the clerk's office of his own court, and the want of information thus pleaded could be removed at once by reference to the records. The clerk, it would seem, could have no reluctance in giving such information, for a deposition made by him concerning another point has been submitted by the judge. The residences of *two* were known to the first judge, but we are not informed whether they were two of the *one hundred* admitted before the attention of the court was called to the law, or two of the *forty* naturalized afterward. It is charged, however, that the whole party came from *Onondaga*. The judge says, the two to

whom he refers resided in his own town in *Madison* county, and the charges do not cover the naturalization of those. But those two had filed their certificates of intention as he was *informed*. Informed? when? by whom? in what manner? where were the certificates filed? Does the first judge of Madison county administer the laws upon information? Courts of justice ought to proceed always upon proofs, never upon information. No individual, the judge says, was challenged as to his proofs. The affidavit of Sheldon shows that Mr. Foster, a counsellor, stated to the court that it was understood that said foreigners (the forty) had never declared their intentions to become citizens according to law, and that they claimed to be naturalized on the sole ground of a residence of five years in the country and one year in the state, although they had come to this country after 1812, and after they were eighteen years of age. This averment is not denied. It was a challenge to all the parties before the court, and yet the judge says no *individual* was challenged. But does the judge hold that persons may be admitted to citizenship in violation of law, provided they are not challenged? Where is the authority for this extraordinary proposition? No right of challenge is conferred by law upon any person, nor is any such challenge rendered necessary. It is for the judge to proceed according to law, even although his departure from it would be known only to his own conscience.

Did the challenged persons submit proofs that they had filed a previous declaration of their intentions, or that they came within the exceptions of the acts of Congress? The judge does not deem this point worthy of notice in his reply; but by an affidavit made by the clerk, and which the judge has submitted, it is expressly shown that not one of the party naturalized offered or was required to give such proofs.

It is not denied that the letter from James R. Lawrence, Esq., referred to by the petitioners, was received. A copy of the letter accompanies the petition. It refers to the acts of Congress, and shows the law clearly and explicitly. The first judge thinks he did not read Mr. Lawrence's letter. Admitting this doubt to have the full force of a denial, and supposing it made under the solemnity with which the receipt of the letter by the court is proved, there still remains the fact that the contents of the communication were stated to the first judge by one of his associ-

ates, and were the subject of argument; and he admits that he thought it an unwarrantable interference on the part of Mr. Lawrence. It is not denied that Messrs. Foster, Sedgwick, and Newcomb, addressed the court, declaring that its practice was illegal, and produced and offered to read the acts of Congress. The first judge remarks: "Again it is said, that they were prevented from discussing the question and reading the law, and that I said I had no right to delay those who were applying for naturalization, and could not stop for any report; all which I most unequivocally declare to be false and without the semblance of truth." Yet, in another part of his reply, he says: "The only objection to reading the books was, that the question was disposed of for the term, and even then they could read them if they chose." Such a permission to read the law differs not very materially from a refusal to hear it read, since no counsel can, consistently with the respect due to the court, insist upon reading the law relating to a question, after being repeatedly and peremptorily informed (as the counsel were in this case, according to the first judge's own statement) that the subject had been definitively disposed of. It is not denied that Judge Backus stated that he believed the practice of the court was erroneous, and left the bench when he was overruled by his associates. How little impression his leaving the bench made upon the court, may be inferred from the manner in which that circumstance is spoken of in the reply of the first judge. He says: "Had Judge Backus been where his duty called or required him to be, and not in the yard keeping watch, he would have given a more correct statement of facts. As to the judicial courtesy manifested in making the statements to gratify the private malice of others, or to favor their personal views, I have nothing to say. How far he was horror-stricken, I have not the means of knowing. It is certainly a new mode of controlling the court, to abandon his seat because he differed in opinion with his fellows on a given point." If judges are ever to be presumed to understand the laws they are required to administer, or if wilful refusal to know the law is to be regarded as equivalent to intentional violation of it, the charges against the judges are fully sustained, and they are convicted of having wilfully, and with full knowledge of the law, admitted forty unqualified persons to the rights of citizenship, in open violation of the acts of Congress.

It remains only to consider what is offered in excuse of the proceeding. Judge Rodgers states, and is abundantly sustained by evidence, that for a period of twenty years, it had been the practice of the court to naturalize aliens without requiring any proofs of their having previously filed a declaration of their intention to become citizens, or proofs showing that they came within the exceptions; that this was the practice when he was called to the bench; that it was never questioned until the time when the transactions complained of took place; and that it was the custom of the court to devolve the whole business upon the clerk, who conducted it without the knowledge of the judges, and even while the court were engaged in the trial of causes.

Although it can not but excite much regret and mortification, it must be admitted that it appears from the papers before me, that the political excitement which in October last prevailed throughout the country, and which was elsewhere proper as well as unavoidable, was on this occasion found to have reached that place, which is the last it should ever enter—a court of justice. The answer of the first judge shows that when Mr. Lawrence's letter was read by him (if it was so read), he considered it an attempt, under the mask of friendship, to interfere unwarrantably with the course of proceedings in the court of a neighboring county; and further, that he thought it would probably be well to reform the abuses in the practice at home, before he (Mr. L.) went abroad. When the counsel raised the question, it was replied, and seems to have been admitted by them, that they had practised procuring the naturalization of aliens according to the custom complained of by them. By the answer of the first judge, it appears that the force of their appeals to the court was weakened, in his estimation, by the charges made against them that they had availed themselves of the practice to secure the admission of persons of their own political party, and they were thus supposed to be convicted of duplicity, or at least of unfairness, in raising objections to the application of the rule, in order to exclude persons supposed to favor the political party to which the counsel were opposed. The court, on the day when the question was first raised, were engaged on the calendar of issues of fact; and on the second occasion, were disposing of the *certiorari's* before them, with a view to a speedy adjournment; and they thought that as the practice had been so long settled, and had, as they

supposed, received the sanction of the learned circuit judge of the district, they would not change it without more deliberate and careful consideration than they felt at leisure to bestow upon it.

The reply of the first judge shows that the political excitement alluded to has not yet lost its influence upon his mind. He says, "How far this course, on the part of the movers, was proper after participating in the illegality, if it was so, themselves, during the same term, as admitted by them, I leave to your excellency, and your honorable body. I am not, however, to be dragooned or menaced into any course inconsistent with my opinion of duty, while I hold my place." Again he says, "Whether it comports with that comity which is due to courts in neighboring counties to station spies at their doors, or within their bar, who are to act as informers, I leave to your excellency, and to your honorable body. A practice so obnoxious to common decency, I believe will not lead to any good result, and it may produce evils that can not be remedied. That unfledged lawyers, infants in their profession, * * * * * * * * should be sent abroad to coerce honorable men into their views of right and interrupt the business of courts, under the pretence of doing homage to the law, is an outrage upon the established rules of judicial decorum." The counsel complained of, might, perhaps, be excused for at least an equal ignorance of the laws in question, with the court in which they practised. It might, perhaps, be allowed, also, in their defence, that when the court had established the practice, counsel had no alternative but to follow it. But, allowing to the judges the full benefit of all the matters set up by the first judge, all will agree that it would have been highly honorable, and have reflected credit upon those judges, and upon the judiciary of the state, if, in this instance, where forty persons applied for admission to citizenship, without the legal qualifications, the court had thought the subject of sufficient importance to be examined *before* the persons were naturalized instead of *afterward*. It would have elevated the judges in the respect of the public, if they could have devoted one hour, or two hours if necessary, to the investigation of a subject so important, and so deeply affecting the public welfare. It would have been highly honorable to them, if, waiving personal objections to the counsel by whom the question had been raised, they had suspended their decision until they had ascertained, what now is perfectly clear, that the prac-

tice of the court on that subject was altogether erroneous, and in violation of law. It would have been a decision covering the court with lasting honor, if the judges had had so much firmness as to apply the right and true construction of the law, to the exclusion of persons favoring their own political sentiments. This course would have been still more honorable, since it appears the judges had reason to believe that until that time the advantages of naturalization, according to their illegal practice, had been gained by their political adversaries. Unhappily, they pursued a different course, and, it must be admitted by all that, although the proceedings of the judges may not merit the severe censure invoked by the accusers, they can not be commended to general imitation by the judiciary.

Singular as it may seem to our fellow-citizens, and much as it is to be lamented, that provisions of law so plain as those involved in the complaint should be misunderstood by the court for twenty years, I am satisfied that such must have been the case. Occasions seldom occur in the state judicatories for referring to acts of Congress. Digests of the laws of the United States are rarely found, and it is not easy to collate the various enactments. I have known the same erroneous views now complained of, to prevail in several other courts of common pleas.

I can not too plainly express my conviction that the course pursued by the judges of Madison county in devolving the judicial power of the court upon the clerk, an officer to whom no such responsibility belonged, was a palpable and gross dereliction of judicial duty, indefensible upon any principle recognised in the establishment of our judicial system, and dangerous to the public liberty. But even this abuse also pleads the sanction of widely-prevalent and long-standing custom.

It is possible that the political excitement which seems to have existed when these transactions occurred, confused the perceptions of the judges, and prevented that conviction on their part, of the illegality of their proceeding which it was the object, and must otherwise have been the effect of the remonstrances to produce. I am inclined to this view because although the first judge has denied all political bias or influence *in the conduct of causes before him*, it is singular that he has abstained from a denial of the political bias or feeling charged upon him in the proceedings in question. It is not impossible, therefore, that in

the excitement of the occasion, the judges overlooked the consequence that by admitting forty unqualified persons from another county to the rights of citizenship, they invaded the right of every citizen of that county, and of every duly-qualified elector of the state and of the country.

While the power is conferred upon the executive by the constitution, and while it is his duty to recommend the removal of judges who prove themselves unworthy of their high trust, there is another remedy provided by the constitution, and the executive power of removal is one which ought not to be exercised so frequently as to shake the independence of the judiciary. Under all the circumstances I am of opinion that the exposure of the proceedings of the judges, in the present case, will be sufficient to induce a correction of the practices complained of, and prevent an imitation of them by other courts.

I shall deem it my duty to transmit the papers to the legislature, that that body and the public may know the existence of the abuses which have found their way into the courts; and, if necessary, it is not to be doubted that a proper remedy will be applied.

I have noticed only the defence of the first judge. The defences of his associates do not vary the case. But Judge Clark not being by profession a lawyer, may, in my judgment, be reasonably excused for relying upon his associates, who were men of respectability in the legal profession. It is remarked, also, in justice to Judge Clark, that his denial is under oath, and is full and explicit in repelling the imputation of partisan feeling or excitement, a denial to which I yield my full and implicit credence.

To guard against misconstruction, it is proper to say, that I am not to be understood as maintaining the wisdom or expediency of the provision requiring a declaration by foreigners of their intention to become citizens, to be made two years before applying for admission. In conformity with principles heretofore often published, I am of opinion that it would be wise to remove this and other obstructions to naturalization, and believe it would be better for the permanent interests of the country to confer the right of suffrage upon all who ask it, and who have not rendered themselves unworthy of it by crime, after a period of residence less than that prescribed by the naturalization laws. But these

are opinions, not laws, and judges and magistrates are bound to execute the laws, not as they suppose they ought to be, but as they are.

It is manifestly unreasonable to expect that the people will observe laws regulating elections, in such a spirit as to secure the freedom of the ballot-boxes, if the judiciary do not firmly and impartially sustain the laws, whatever they may be.

MANUFACTURE OF SILK IN PENITENTIARIES.

ALBANY, MAY 7, 1841.

To the Legislature:

The memorial herewith transmitted, concerning the grievances of mechanics in consequence of the manufacturing operations carried on in the stateprisons, has been submitted to me with a request on the part of the petitioners that I would lay the same before the legislature. I cheerfully comply with that request.

I have had occasion to express the opinion that the employment of the convicts in the occupations pursued in the prisons as it has hitherto been conducted, is injurious to the interests of those of our fellow-citizens engaged in similar pursuits. At the same time there can be no doubt that it would not be wise nor even humane to depart from our system of combining hard labor with imprisonment and proper discipline in our penitentiaries. It appears to me, however, and is indeed a very prevalent opinion, that no test has been made of the experiment whether manufacturing operations can not be introduced into the prisons, differing from many now carried on there, and which would not conflict with the interests of any portions of our fellow-citizens. To maintain the converse is to assume that far the largest number of manufacturing branches, and many of those which are the most important and lucrative in other countries, can not flourish among us. Certainly there is no ground for such an assumption. On the contrary, with the increase of capital and labor, and almost without the aid of protecting duties, we are continually, although not rapidly, enlarging the circle of our manufacturing operations. When the cheapness of labor and other facilities in the stateprisons are considered, it can not be doubted that a system which operates injuriously by competition upon mechanica pursuits now carried on in the state, might be made useful in in

troducing those in which our fellow-citizens have not yet found sufficient inducements to engage. History shows that in almost every country in Europe new branches of agricultural and mechanical industry have required and received favor and encouragement from the government. This state can give such encouragement to some extent in the manner indicated, and certainly none ought to lament that when any new branch of business has been rendered profitable in the prisons, our fellow-citizens will engage in it.

If such an experiment could be successful, the public welfare would be promoted, because we should be relieved in some measure from dependence on foreign manufacturers. At the same time it is certain that any abrupt and general change of the occupations of the convicts would be followed by very injurious consequences. Such an immediate change, however, is not contemplated nor desired. On consulting with the agents of the prisons, I find reason to believe that some branches of the manufacture of silk might be successfully introduced, and that there are many kinds of manufactures not now carried on in this state which might be made profitable in the prisons. The prisoners are now maintained without contributions from the treasury, and probably no more favorable state of circumstances will occur. I submit therefore whether it may not be proper to provide effectually for enforcing existing laws, and also to require the agents of the prisons to introduce from time to time new departments of labor, as far and as fast as can be effected without violating existing contracts. Such a course would avoid all danger of reducing the revenues of the prisons below the sum necessary for their support, and at the same time the question so interesting to the memorialists and the public might be safely tested and the result might be made known from time to time to future legislatures. I forbear, however, from entering into the discussion of the subject, because it has already engaged the attention of the legislature.

THE CASE OF ALEXANDER M'LEOD.

ALBANY, MAY 19, 1841.

To the Assembly:

In compliance with a resolution of the honorable the assembly, I communicate a copy of all the correspondence which has taken place between this department and the executive authorities of the United States, concerning Alexander M'Leod.

I have the honor, also, to inform the assembly that no arrangement whatever, of any kind, or for any purpose, has been entered into by this department with the executive of the United States concerning that individual.

The assembly is further informed that the prisoner is now before the supreme court of this state, on a writ of habeas corpus, sued out, as is understood, by himself, with a view to his discharge from custody. This department has no knowledge nor information concerning the application for said writ, the issuing the same, or the action of the court, except such as has been obtained from the public newspapers, and is presumed to be in the possession of the assembly. The proceeding first became known to this department when the prisoner passed through this city, on his way to the city of New York, in custody of the sheriff, in execution of the writ of habeas corpus. The attorney-general of this state was thereupon immediately instructed to resist the motion for a discharge of the prisoner, and at the same time the president of the United States was respectfully informed that the appearance of the district attorney of the United States, as counsel for the prisoner, was deemed incongruous with official duties, and injurious to this state. The attorney-general is now engaged in the duty assigned him.

An incidental correspondence on the subject of the imprisonment of Alexander M'Leod having arisen between his excellency the governor of the Canadas, and the executive of this state, a copy of the same is also laid before the assembly.

The assembly is respectfully assured, that under no circumstances will any arrangement or proceedings be entered into, or permitted, with the consent of this department, the effect of which might be to compromit in the least degree the rights, dignity, or honor of this state.

RECEIVERS OF MONEYED INSTITUTIONS.

ALBANY, JANUARY 22, 1842.

(EXPUNGED BY THE SENATE.)

To the Senate:

I have received a bill which originated in the senate, entitled "An act to repeal an act, entitled 'An act respecting the appointment of receivers of moneyed institutions, passed April 27, 1841,' and to limit the compensation of receivers."

The law thus proposed to be repealed was approved by me, not simply from an accustomed deference to the representatives of the people, but under a belief that its provisions would have a salutary effect in relieving the court of chancery from the duty of conferring appointments, which had come to be regarded as constituting no inconsiderable official patronage, and thus, in accordance with the spirit of my previous recommendations, abridging the aristocratic and overshadowing power of that court.

It seemed to me peculiarly proper, also, to vest the power of designating receivers in the bank commissioners, on account of their intimate acquaintance with the affairs of insolvent corporations and the general financial interests of the country, while it was believed that the amendment of the law, so as to permit receivers to compromise and compound doubtful claims and demands, would be at once humane and beneficial in securing creditors and corporations against losses by delays and litigation.

Note.—The constitution of New York rendered the "approval" of the governor necessary to the passage of every bill passed by the legislature, unless, after a veto, it received the votes of two thirds of both houses. The executive message of approval, if expressed in general words, left the governor responsible for all the principles and details of the law. Governor Seward claimed the right to assign the grounds of his approval. The Senate denied this, and hence arose the conflict exhibited in these proceedings.—*Ed.*

Not at all doubting that the legislature have examined the subject in all its relations, and with better information than I possess, I may nevertheless be permitted to observe that nothing has come to my knowledge, during the nine months which have elapsed since the law went into effect, to induce a belief that it it has operated injuriously.

But the general responsibilities of making laws rest with the legislature, while on the executive are devolved only the duties of recommending measures, and of rejecting, for sufficient causes, bills originated and perfected by the representatives of the people. Although the executive might reluctantly feel himself obliged to interpose objections in a case where a proposed law should have hastily and inconsiderately passed the legislature, or should contravene the letter or spirit of the constitution, or infringe individual rights, or impair the necessary efficiency of the executive administration, or invade the constitutional or appropriate powers of any department of the government, or threaten any pervading or lasting injury to the public welfare, or should tend to produce inequality or injustice, or deeply compromise any recognised principles of republican institutions, yet the person administering the government could not interpose objections to less important bills upon the mere ground of a difference of opinion concerning their expediency, without assuming an undue share of legislative responsibility.

Applying these principles to the present case, I have not thought it my duty to embarrass the action of the legislature; but, cheerfully confiding in their superior wisdom, have approved and signed the bill, availing myself of this occasion to submit an explanation, inasmuch as the proceeding involves an apparent inconsistency which might lead to misapprehensions concerning my views of the policy of the measure.

THE RIGHTS OF THE EXECUTIVE.

ALBANY, JANUARY 26, 1842.

(REJECTED BY THE SENATE.)

To the Senate:

On the 22d day of January instant, I transmitted to the senate a message in writing, according to an immemorial usage, informing them that I had approved and signed a bill which had originated in that house, and had passed the legislature. The bill repealed a law which had been only nine months in force, and had received my approval. That law was regarded by me (with all due deference, nevertheless, to the legislature) as one of so benign and useful a tendency, that I could not but regret that it was thought necessary to take it from the statute-book. At the same time the occasion seemed not to be one of those important exigencies which justify the interposition of the executive power, to embarrass the action of the legislature. Under these circumstances it seemed to be my duty to make known to the legislature, and, by the customary form of communication to them, to make known to the people, the special ground of my acquiescence in the action of the legislature, to the end that whether now or hereafter, the subject should be reconsidered by the representatives of the people, or by the people themselves, that acquiescence should not be construed into a sanction of the policy of the act. In making that communication I was governed by what I trust was a just sense of official responsibility.

Although the message was transmitted to the senate, it was, as all such communications are, designed for the information of the legislature. The constitution requires that each house shall keep a journal of its proceedings, and in that journal it has been customary to enter all the proceedings not only of both houses, but also all communications from the executive touching such pro-

ceedings. I may be permitted to observe, with due respect, that it is supposed these journals are directed to be kept not so much for the convenience of the legislature, as for the information of the people, and that each department of the government is responsible to the people for its acts as they appear on those records.

The senate, after receiving the communication, has thought proper, in a marked and formal manner, to cause it to be excluded from the journal of that house, without declaring that it was supposed to express or manifest any disrespect to the legislature, or to the senate.

It is not my purpose to complain in any manner of the proceeding, upon the ground of its injustice, although by the suppression of the message the reasons of executive action upon a question of public policy, which can not be deemed unimportant, since it has become the subject of a law, are withheld from the people; and it may not be unreasonable to suppose that when the traditional memory of the transaction shall have passed away, the record of the senate will raise an implication that the present incumbent of the executive department so far misunderstood the proprieties of his station, as to address the legislature in terms disrespectful or discourteous. But it is a solemn duty of the person administering the government of this state at all times to preserve, as far as may depend upon him, the constitutional power of the department assigned to him. I do, therefore, with extreme regret that such a proceeding has become necessary, and with the most respectful deference, inform the senate that the suppression of the communication referred to, is regarded by me as a dangerous invasion of the rights of the executive department, unwarranted by any precedent in the history of the government, and without any justification in the circumstances of the transaction.

THE VIRGINIA CONTROVERSY.

ALBANY, FEBRUARY 11, 1842.

To the Legislature:

In my annual message I informed the legislature that the state of Virginia had adopted a law calculated to embarrass our commerce, and which would go into effect on the first of May next, unless this state should see fit to comply with certain requirements made by our sister-state.

It is now my duty to announce that the general assembly of South Carolina, on the seventeenth day of December, one thousand eight hundred and forty-one, enacted a law which declares that it shall not be lawful for any vessel, of any size or description, owned in whole or in part, or commanded or navigated by any citizen or resident of the state of New York, or any such vessel owned in whole or in part, or commanded or navigated by any other person than an actual inhabitant and resident of South Carolina, and departing from any port in that commonwealth to any port of New York, to leave the waters of South Carolina until the commandant of such vessel shall have submitted to search, and have complied with restrictions similar to those attempted to be imposed upon our vessels found in Virginia, by the law of that state.

I submit a copy of the act of South Carolina, by which it will be seen that the law will take effect on the first of May next, but that the governor is authorized to suspend its operation on being officially informed that the executive of New York has consented to comply with the demand of the state of Virginia, hitherto disallowed, for a surrender of certain persons as fugitives from justice, and that the legislature of this state has repealed the act of 1840, extending the right of trial by jury.

We are indebted to the courtesy of the general assembly of

South Carolina for a report and resolutions setting forth the grounds of their very extraordinary proceeding. Since that proceeding contemplates certain specified action by the executive, as well as by the legislature of this state, as a condition upon which the citizens of this state shall hereafter enjoy unmolested in South Carolina, rights and immunities guarantied to them by the constitution of the United States, I have respectfully communicated to the governor of South Carolina my decision upon the proposition thus submitted to me. That decision maintains the grounds heretofore assumed in my correspondence with the authorities of the state of Virginia.

The general assembly of South Carolina pronounce our law extending the right of trial by jury an act which is in the most alarming and dangerous form in which fanaticism or folly has made its assaults on an ancient domestic institution cherished in the hearts of the people of the south, and they very clearly and fully set forth the reasons for this opinion. I submit them, in full confidence that they will receive that early and deliberate consideration which is due to them, not only from the magnitude of the subject and the shortness of the period which is to elapse before the rigorous measures of Virginia and South Carolina will take effect, but also from the respect toward South Carolina which I am sure is entertained by the people of this state. My own views of the law in question, differing essentially from those presented in the papers now submitted, have been already made known to the legislature.

THE PUBLIC LANDS.

ALBANY, FEBRUARY 23, 1842.

To the Legislature:

The state of South Carolina asserts, in the resolutions herewith submitted, that the act of Congress which directs an appropriation of the proceeds of the public lands among the states is unconstitutional, and violates the terms of cession. She, therefore, announces her determination to refuse her share of the funds, and requests me to solicit your co-operation in annulling and repealing the law.

Her argument is, that "the United States of America is a body corporate, distinct from the states as political bodies, and capable of holding real and personal property;" and that the public lands, like the vessels of the navy, belong to the United States of America, and like them "are to be used" or "disposed of" for "the common benefit of all the states;" but "the property in them does not vest in any or in all the individual states for partition."

South Carolina, in 1832, invoked our co-operation in annulling a tariff law, and then informed us that in her opinion all national sovereignty remained undivided and undiminished in the several states, and that the United States of America, considered in relation to the several states, was strictly and merely a confederation, without absolute independence or sovereignty. Happily it is not necessary to decide between these certainly very incongruous expositions of the same text by the same respected authority. The public lands were ceded by the several states and acquired by the United States of America before the federal constitution was adopted, and at a time when the United States of America was that mere confederacy of independent sovereign states that South Carolina, in 1832, insisted that it continued to be, notwithstanding the adoption of the federal constitution. The deeds of cession respectively, and the resolutions inviting the cession, declared that the lands should enure to the common use

benefit of such states, including the granting states, as should become members of the confederacy; and stipulated that the ceded territory should be formed into states. The constitution did not change the estate, but on the contrary expressly declared that no claim of the United States, or of any particular state, should be impaired. Besides, inasmuch as Congress is authorized to dispose of the lands for the common benefit, it seems to be competent for that body to decide that a partition of the proceeds among the several states, in a just proportion, is such a disposition as the constitution contemplates.

As early as 1806, President Jefferson, foreseeing the then distant payment of the national debt, repeatedly and earnestly submitted to Congress the necessity of retaining discriminating duties upon foreign fabrics to protect domestic manufactures; and advised the application of the consequently inevitable surplus revenues to the great national purposes of education and internal improvement. This policy has been relinquished; whether for good or for evil it is yet, perhaps, too early to determine; and education and internal improvements are now regarded as falling within the peculiar responsibilities of the states. The federal government, in 1833, acquiesced in an importunate demand of South Carolina, and so far suppressed imposts upon foreign luxuries that the revenues from that source are not merely inadequate to the protection of domestic manufactures, but are insufficient for the ordinary expenses of the government in a season of peace, and while the government seeks to pursue a course of studied economy. And yet our sister-state, in a manner scarcely less earnest than before, insists now that the general government shall spend the patrimony of the states in order to reduce still lower the duties upon luxuries imported for the use of the rich, who ought to contribute most abundantly to the support of the government.

The policy, established by the law which South Carolina repudiates, has been uniformly advocated by this state. It was proposed by the illustrious Clinton, in 1827. President Jackson announced it to Congress, in 1829, by declaring that imposts of protection would necessarily be continued for a long time; and submitting that the most safe, just, and federal disposition of the surplus revenues would be an appropriation of them to the several states. The then governor of New York* responded to the

* Governor Throop.

recommendation, in 1830 and in 1831; and no dissent was expressed by the legislature. When the president subsequently vetoed a bill providing for such an appropriation of the avails of the public lands, a resolution of approval of that proceeding, which hastily passed one branch of the legislature, failed to receive the sanction of the other. The assembly, in 1839, with much unanimity, declared in favor of a distribution; and in 1840 and 1841, I had the honor to transmit approving legislative instructions to our representatives in Congress.

Having always approved and often recommended such a measure, I can not now commend the views of South Carolina. On the contrary, I ask you to uphold the law. First, because it constitutes the basis upon which a superstructure of discriminating imposts upon foreign luxuries, for defraying the expenses of the government and protecting American industry, must be rebuilt and maintained, so long as our commerce encounters the effects of a similar system in other countries. Secondly, because the grounds assumed by South Carolina are not more available for rescinding this distribution law of 1841, than for repealing what is called the deposite law of 1836; and thus depriving our system of universal education, at once, of its endowments and its efficiency. Thirdly, because the revenues to be derived by this state from the national domain, under the law, are now important to sustain our credit and avert taxation; and will be henceforth invaluable and constantly augmenting resources for extending the benefits of internal improvement to every portion of our fellow-citizens. And fourthly, because the revenues to be derived by other states are necessary means for their restoring their currency, credit, and prosperity, which have been exhausted in generous efforts for education and internal improvement; and those means judiciously applied, with the fostering aid of Congress and the right sympathy of this state, will enable the embarrassed states to relieve the people and to complete their public works; results in which this state has an interest too obvious to need exposition, and too important to be neglected. I should not perform my whole duty on this occasion, if I did not solicit your efforts to obtain such a modification of the law in question as would continue it in force, notwithstanding the duties upon foreign goods may be raised above the standard of twenty per cent.

THE MEMORY OF GENERAL HERKIMER.

ALBANY, MARCH 8, 1842.

To the Legislature:

The Congress of the United States, previously to the establishment of the federal constitution, passed a resolution requesting the state of New York to erect a monument to the memory of Nicholas Herkimer, a patriot general, who died of wounds received in the battle of Oriskany, on the 6th of August, 1777. The expense of the proposed monument was fixed at five hundred dollars, to be paid out of the treasury of the confederation. This resolution was forgotten in the excitement of the Revolutionary conflict, and it remains to this day unexecuted. The descendants of General Herkimer, justly cherishing his fame, called my attention to the resolution more than a year ago, expressing a desire that it might even at this late period be carried into effect. I thereupon addressed a communication to the secretary of the treasury, inquiring whether the money so appropriated would be paid. The secretary replied that it would be necessary to apply to Congress; but the session was then too far advanced to engage the consideration of the national legislature. The descendants of General Herkimer have again called my attention to the subject. After some reflection it seems to me that Congress might reasonably expect the people of this state to express their present appreciation of the services of the deceased, and their willingness to concur now in paying the long-deferred tribute to his memory.

Time, I am sure, has only increased the affectionate veneration of the people of New York for the memory of Herkimer, one of the bravest of her sons, who fell in the cause of American Independence. I hope, therefore, that the legislature will instruct our senators and representatives to bring the subject to the consideration of Congress.

The pecuniary appropriation required is in every view unimportant to this state, and to the descendants of the deceased. A more costly monument could be erected by either the one or the others without inconvenience; but such a monument would not be what the Revolutionary Congress designed—a memorial of the gratitude of the American people. Such a memorial, although it might cost even less than the small sum, would be more honorable to the memory of the patriot than a golden statue.

NOTE.—Mr. Lossing, in his "Field-Book of the Revolution," thus speaks of the burial-place of General Herkimer:—

"The family burial-ground is a few roads from the mansion once occupied by the gallant general, in the town of Danube. Seventy years ago the Continental Congress resolved to erect a monument to his memory; but the stone that may yet be reared is in the quarry. Until 1847, no stone identified his grave. Then a plain marble slab was erected, with the name of the hero upon it, which is now (1848) overgrown with weeds and brambles."

The circumstances of his death are worthy of being remembered. During the bloody battle of Oriskany, amid a most terrible slaughter, Herkimer's horse was shot dead, and the general mortally wounded. He ordered the saddle to be taken from the horse, and with the most perfect composure directed it to be placed against a large beech-tree. Seated there, with his pipe in his mouth, the intrepid general gave his orders to his soldiers while they were falling around him like autumn foliage, and the bullets of the enemy were whistling by him like driving sleet. After the battle, he submitted to an amputation of his shattered leg, but died from the loss of blood. Previous to his death he called for the bible and read aloud the 38th Psalm, applying its penitential confessions to his own case, closed the book, and then he sunk back on his pillow and expired. Colonel Stone well remarks, that if Socrates died like a philosopher, General Herkimer died like a Christian hero.—*Ed.*

THE NEW YORK AND ERIE RAILROAD.

MARCH 14, 1842.

To the Legislature:

The letter of the president of the New York and Erie Railroad Company, herewith transmitted, shows that if legislative aid shall be longer withheld from the association it must desist from prosecuting its great enterprise; the laborers employed must be discharged; the interest on the three-million state loan which will accrue on the first of April next will remain unpaid; the contingent debt will fall immediately on the treasury; the capital invested in the enterprise by our fellow-citizens will be lost; the New York and Erie Railroad, in its scarcely half-complete condition will be exposed to auction at the suit of the state, and the just expectations of immeasurable benefits to result from the enterprise will be suddenly and hopelessly disappointed.

This information can not excite surprise. No one could have expected that the road in its unfinished state could produce capital or even revenues, and the association acted wisely in devoting all their means to its prosecution, relying upon the justice of the state, and the liberality of their fellow-citizens, for such additional resources as should be necessary to secure its completion.

Respectfully referring to the suggestions made in my annual message in view of this crisis, I will only add, that no measure less favorable to the enterprise than the past policy of the state, could now be effectual, while none, in my judgment, that would involve any sacrifice on the part of the state is necessary. Nevertheless, the responsibility of conducting the enterprise to an early consummation seems to me to rest, not with the New York and Erie Railroad Company, but upon the state. The association

can only by regarded by the people as an agent of the legislature, and while, like all other agents, it ought to be held to a just accountability, the state can not discharge itself from responsibility by pleading the failure of its agent, whether with or without excuse, to perform its duties, or meet the expectations of the legislature.

VETO MESSAGE.

COURTS OF CRIMINAL JURISDICTION.

MARCH 31, 1842.

To the Senate:

The bill entitled "An act to repeal an act for the better organization of criminal courts in the city of New York, passed May 14, 1840," imposes upon me the duty of reconsidering my approval of that law. In the absence of information which would lead toward the conclusion at which the legislature has arrived, I cheerfully resort to the report of the assembly's learned judiciary committee for a guide to the grounds to be examined.

The repeal is argued from a strong repugnance to the law, manifested by the people of New York as represented in their city councils, an aversion so great that those councils have refused to recognise the constitutionality of the act; have refused, also, to pay the salaries of the judges, and are pursuing an angry litigation with those officers; while the aldermen constituting the higher council, individually persist, in defiance of the law, in taking seats upon the bench of the court of general sessions, under circumstances which create apprehensions of unseemly collision between themselves and the court. The supreme court has legitimately reviewed the act and affirmed its constitutionality. The report, however, claims that the legislature is not bound by this decision, but waives a discussion of it. In these circumstances, the executive must be allowed to confide in the adjudication, since without questioning the independence of the legislature, he regards himself as bound to support the constitution, not with a privilege of vague and arbitrary construction, but as it is expounded by supreme judicial authority.

Shall we then repeal a constitutional law because a subordinate municipal council denies its constitutionality, or because persons

whom the act divests of judicial power angrily contend with those to whom that power is transferred? Would not such a proceeding be an abandonment of the constitution and of the judiciary, and even a renunciation of legislative authority? And if a proceeding apparently so injurious to republican institutions and laws were necessary, could we, without a departure from the spirit of constitutional law, omit to compensate the displaced judges for the two years of actual service they have rendered under commissions as legal and perfect as any other derived from the people?

Nor can the supposed insubordination of the municipal councils of New York compromit that enlightened metropolis. Those councils can bind their constituents only by legal acts, and even these may be, and often are, disapproved. Indeed, the people of that city are not excelled by citizens in any other part of the state in enlightened and confiding devotion to the constitution and laws.

The act of 1840 is represented in the report as an oppressive grievance, for the reasons that the public confidence, which such a court as the general sessions ought to enjoy, would be more naturally and readily conceded to a tribunal in which there should be associated with a learned and permanent presiding judge, two persons drawn from the common walks of life and annually responsible in popular elections, than to the court as now constituted; and because the simplicity of the principles of criminal jurisprudence renders it unnecessary and improper to have more legal experience on the bench than is secured in the appointment of the recorder; that long continuance in office renders a judge susceptible of prejudices against accused persons and induces severity in awarding punishment; and that this supposed tendency of judicial experience, operating in the court through the recorder, might be corrected by the association of aldermen.

This argument would seem to be answered by the considerations, that all the faults imputed to that court or its judges are altogether opposite to the rigor and sternness thus deprecated; that the law which is proposed to be repealed does not exclude as judges persons of any condition in life, nor require a superfluity of learning or experience; and that the only reliable confidence which any court can enjoy must result from the manner,

not so much of its constitution as of its performing its functions, and from its efficiency in protecting the lives, liberty, property, and happiness of the people.

A union of incongruous functions seldom fails to produce negligence and unfaithfulness in their exercise. It would seem that judicial duties would be more assiduously and discreetly performed by persons expressly assigned, or at proper seasons exclusively devoted to them, than by individuals in rotation, who are charged simultaneously with fiscal, magisterial, and legislative responsibilities so comprehensive as those of the municipal government of New York. But we have the aid of experience in reviewing the decision which the legislature of 1840 made upon induction only. That act originated in a complaint made by a presiding judge of great experience in the court of sessions, to the common council in 1836, showing the inadequacy of the tribunal to maintain a complete and successful administration of justice. A grand jury, and a select committee of the common council renewed the complaint in 1840, and the law was passed to correct the great evil thus presented. There were 1,875 trials, 7,675 criminal cases, 639 convictions, and 7,135 persons admitted to bail in the courts of general and special sessions of New York in 1838, and 1839, while in 1840, and 1841, there were 2,791 trials, and only 4,723 cases, 739 convictions, and only 4,932 recognizances. The greater number of trials and smaller number of cases, and the increase of convictions and diminution of recognizances seem to show, if not the excellence of the court, at least the superiority of its present over its former organization.

It is again urged that the act of 1840 is a grievance requiring legislative redress, because the common council and the legislative representatives of the city opposed its enactment. While it is admitted that this objection deserves a serious examination by the legislature, the respect due from the executive to that body obliges me to suppose that it does not harshly or unjustly overrule a minority, and that local objections are not disallowed except from some public necessity, or to promote the general good.

The constitution declares that the governor and senate shall appoint all judicial officers except justices of the peace, and that judges of the county courts shall hold their offices five years, if not sooner legally removed. The court, as at present organized,

is constituted in conformity with the constitution in these respects, while a restoration of the aldermen to the bench, as proposed by the bill before me, would be as manifestly in conflict with those provisions. But it is contended that certain reservations in the constitution exempt the court of general sessions of New York from those constitutional requirements, and so the supreme court has decided. That adjudication has, nevertheless been challenged by the attorney-general, and the court for the correction of errors on a hearing of the case, being equally divided, failed to decide the question. The same grave question is now, upon *information*, before that court. While we yield entire respect and submission to the adjudication of the supreme court, we must at the same time foresee that, if it should be reversed, and the law of 1840 should, in the meantime, be repealed, the city and county of New York, containing about one eighth of the population of the state crowded within a territory of twenty-two square miles, would be without a court of criminal jurisdiction higher than a court of special sessions. Under these circumstances, respect for our highest judicial tribunal and prudential considerations relating to the public welfare, persuade me that even if the law of 1840 ought ultimately to be repealed, yet it should nevertheless be left in force until after the decision of the court for the correction of errors shall be known. I am reluctantly obliged for this and the other objections which have been set forth, to return the bill for the further consideration of the legislature.

NOTE.—The law was repealed at a subsequent session of the legislature.

VETO MESSAGE.

THE PRINTER TO THE STATE.

ALBANY, APRIL 7, 1842.

To the Assembly:

I return with objections the bill entitled "An act to provide for the public printing."

The provision which declares that certain state officers may make contracts for the execution of the legislative printing, at prices at least ten per cent. more favorable than those now paid, and for periods not exceeding one year, not being imperative, might prove ineffectual.

The sections which authorize the principal executive and administrative officers to contract for the printing required in the several departments, prescribe no duration to such contracts; and, therefore, would permit those officers to grant monopolies, and bring back ancient abuses.

Formerly, although the printer to the state was removable by law, his official term was indefinite. The error was corrected in 1840, by limiting the term to four years. The present bill would again make the term indefinite.

The bill proposes to remove an officer whose term is only about half expired. This proceeding is in the form of a law, and yet is, in its nature and in the spirit of the constitution, an executive rather than a legislative act. My agency in such a case must conform to the general principles observed in exercising similar powers residing in the executive department alone, or shared by that department with the senate. Although the governor, or the governor and senate, may at pleasure, and without assigning causes, remove most of the civil officers not judicial nor elective, before the expiration of their legal terms, yet that power, instead

of being arbitrarily or capriciously exercised, is only put forth when there are just complaints of official incompetency or delinquency. There is no such complaint against the printer to the state. The confidence reposed in him has not been disappointed; and he has performed his duties, so far as I am informed, diligently, discreetly, and faithfully.

If it be necessary to revise the tariff of printing, as the bill would seem to imply, the question then arises, has such a proposition been made to the incumbent? Relying upon the public faith, he has necessarily invested a capital of thirty thousand dollars in procuring the materials necessary to execute the public printing; and it is apparent that under such circumstances he could better afford to submit to just and necessary modifications than to have so extensive a business suddenly arrested, and materials required only for the public service, left unemployed and useless. Grant that the incumbent, reposing upon his contract, would not submit to a just revision, which evidently is not known, and which my knowledge of that officer will not permit me to believe, must we then strike down a party whose interest is opposed to our own, because we have armed him with a legal defence against our demand?

If one party to a contract could upon any consideration rescind it, for his own advantage, justice and equity, nevertheless, would oblige him to indemnify the other for the injury he must sustain Yet I find no pretence of such indemnity in the present case. The laws of morality and justice, and the principles of equity, recognise no distinction between states and individuals. If we can, without indemnity to the other contracting party, abrogate or rescind, or in any manner violate, one contract, we can all others. If we claim an exemption from the obligation of contracts, that claim ought to be known and avowed. Yet the bill before me presents the incongruity of abrogating a contract which is in full force, and yet directing others to be made which could be of no more sacred obligation. Of what use would be the new contracts? If we violate the contract into which we have entered with the state printer, because it relates only to mechanical business, who can determine the point where the principle shall end? How shall we oblige the citizens of the state to perform their contracts, if the state denies her own obligations?

Decide such questions as we may, the no less grave and impor-

tant inquiry yet remains, have we the power to abrogate, to rescind, or even to violate this contract? I speak not of physical force, but of lawful, rightful power, derived under the constitution, from the source of all strength, the people. All legislative power not so derived is a perversion of rightful authority, and is mere usurpation. The act passed January 13, 1840, declared that Thurlow Weed was thereby appointed printer to the state, for and during the term of four years, and should perform all the duties and render all the services enjoined or required by law. Again, the act declared that the printer to the state should hold his office for the term of four years; and again, that the secretary of state and comptroller were thereby authorized to enter into a contract with the printer to the state, appointed by the act, for the public printing during the term of his appointment; and that the contract thus to be made should be reported to the legislature. The printer subscribed the official oath; the contract was executed and reported to the legislature; the responsibilities of the office devolved upon him; and the office, its rights and immunities, by the combined force of the law and the contract vested in him absolutely and indefeasibly, except by his own consent or default. The constitution of the United States, adopting an immutable principle of justice, which would be of equal obligation even without that high sanction, declares that "no state shall pass any laws impairing the obligation of contracts." The supreme court of the United States, in the case of Fletcher against Peck, decided that when a state law was in its nature a contract, and an absolute right had vested under it, a repeal of the law was void, and could not affect those rights, nor impair the title so acquired, even although the original law was procured by fraud and corruption; that a grant from a state was as much protected by the constitution of the United States, as a grant from one individual to another; that an executory contract was as much protected as one that was executed; and that a sovereign state was as much inhibited from impairing its own contract, or contracts to which it was a party, as from impairing the obligation of contracts between individuals. In another case, where New Jersey had declared by law, in 1758, that certain lands to be thereafter purchased for the use of Indians should not be subject to any tax, and in 1804 had directed a tax to be levied on the lands which had thus been purchased, the

same high tribunal declared that the act of 1758 was equivalent to an inviolable contract, and adjudged the law of 1804 a breach of that contract, and therefore void and of no effect. In the Dartmouth College case, the same court declared that all incorporeal hereditaments, as *immunities*, *offices*, and *franchises*, were rights valuable in law, and whenever they were the subject of grant or contract, they were as much within the protection of the constitution of the United States as a grant of land. In a more recent case, that final authority upon all constitutional questions declared that the objections to a law, on the ground of its impairing the obligations of a contract, "could never depend upon the *extent* of the change which the law would effect;" that any deviation or any new condition, or any dispensation of a condition, however minute or immaterial its effect upon the contract, or upon any part or parcel of it, impaired its obligation.

The principle of these decisions is, that although, so far as general legislation is concerned, one legislature may rescind what another has done, yet when an act has been done under a law which is in its nature a contract, a succeeding legislature can not recall it. The present is in the control of the legislature, and it may act for the future, but the past can not be affected by even absolute power. In such cases the laws of the states, like those of an ancient empire, change not.

The bill before me not only proposes to deprive the printer to the state of rights and immunities vested in him by the contract, but to remove him from the office guarantied by a contract invested with all the authority and solemnities that sovereign power can bestow. A legislative act more directly calculated to impair the obligation of that contract than the bill before me, which would annihilate both the law and the contract, can not be conceived. What justification then could I, who am under an obligation to support the constitution of the United States as thus expounded, find for approving and giving effect to such a law? No answer to this question suggests itself, except that the legislature reserved a right to repeal the law. Such a repeal, it was prudently foreseen, might become necessary or useful, if the printer to the state should neglect or refuse to perform its important duties. But, inasmuch as a power reserved for such occasions might be perverted and exercised capriciously or unjustly,

the legislature thought proper, at the same time, to secure the incumbent by a contract to last, not during the pleasure of the legislature or until the law should be repealed, but during the term of his appointment — a contract to which the constitution of the United States would instantly and for ever attach, and which, therefore, would be beyond the reach of even legislative power. This obviously legal effect of the transaction was understood and designed by the legislature; for when the act of 1840 was under consideration in the assembly, a motion to amend the same by an additional provision in these words, "the legislature may at any time alter, modify, or repeal this act; the effect of such repeal shall be construed so as to put an end to any contract made under the same," was lost by a vote of 55 to 69. So also, in the senate, a motion was made to amend the section containing the reservation of repeal, by adding the words "and modify or rescind any contract entered into under the same upon such terms as shall be just and equitable," and was rejected, eight members voting for and eighteen against the same.

Such, also, would seem to be the sense of the present legislature; for the bill before me avoids alluding in any way to the contract; from which I infer, that whatever may be done with the law of 1840, the contract is understood to be within the custody of the constitution, and beyond the reach of the legislature. It could not be doubted that if the bill explicitly declared that the contract was thereby abrogated, it would be a palpable and impotent attempt to infringe the constitution of the United States. But the effect of the bill is the same without such a declaration, for the legislature can not do indirectly what it could not openly and avowedly accomplish.

I am well aware that if the bill should become a law, the public officers might suffer it to have effect, because the legislature of this state has not provided, and the Congress of the United States is, by an amendment of the constitution, prohibited from giving to the injured party in such a case, an appeal to the courts of justice. But that consideration, so far from being an argument for committing the wrong, is the most conclusive reason against it.

The specious argument thus noticed did not escape the consideration of Chief-Justice Marshall, who well observed, that "the constitution of the United States, as adopted, gave the federal

courts jurisdiction in suits brought by individuals against states. A state which violated its own contract was *then* suable in the courts of the United States for that violation. Would it have been a defence in such a suit to have said the state had passed a law absolving itself from the contract? It is scarcely to be conceived that such a defence could be set up; and yet, if a state is neither restrained by the general principles of our political institutions, nor by the words of the constitution, from infringing the obligation of its own contract, such a defence would be valid. This feature is no longer found in the constitution; but it aids in the construction of those with which it was originally associated."

What then is my authority for interposing objections to a bill impairing the obligation of a contract? I find it thus expressed in an adjudication pronounced by the same learned and honored jurist: —

"Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed with some apprehensions the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights for the people of each state."

Some of our constitutional rights as citizens are protected by the courts of justice. But it is when such rights are invaded by the state herself, and she at the same time closes her courts of justice against us, that the obligations of the law-making power are doubly imperative, and that we feel and know the value and importance of the oath which subjects that power to the constitution.

In applying a constitutional restriction in the present case, I can not permit even an apprehension of error to intrude, since there could be danger only in approving the bill, while it can never be otherwise than safe to be just and forbearing in the exercise of power, to abide by the laws and contracts of the state, and to preserve her faith from dishonor and reproach.

THE VIRGINIA CONTROVERSY.

ALBANY, APRIL 9, 1842.

To the Legislature:

I have heretofore made known to the legislature that the states of Virginia and South Carolina have adopted retaliatory acts, which will go into effect on the 1st of May next, and which are calculated to embarrass the commerce of this state; and that those proceedings were grounded, in part, on the supposed necessity of counteracting a law of this state, passed May 13th, 1840, extending the trial by jury. Since those communications were sent the supreme court of the United States has made an adjudication which has been supposed to draw in question the constitutionality of that act. Supposing that it would be important to the legislature to possess correct information on this subject, I have spared no efforts to obtain authentic evidence of the decision.

I have now the honor to lay before the legislature a communication which has just been received from the reporter of the supreme court of the United States, showing with tolerable clearness the points involved in the adjudication, from which it may be inferred that the aforesaid act would be held by that tribunal to be an infringement of the constitution of the United States. Nevertheless, the retaliatory acts of our sister-states are none the less unconstitutional or oppressive, whatever may be the merits of the law of this state. Nor do the conditions contained in those acts provide for their suspension, even, although the law of this state were held void or repealed. It seems proper, therefore, to inform the legislature that, if my present opinion shall remain unchanged, I shall deem it my duty to give notice to any citizens of this state who may be molested in the states of Virginia and South Carolina, in consequence of those laws, that

they will be expected to take all legal measures for their defence, and to appeal if necessary to the courts of the United States, relying upon the faith of this state for their indemnity; and I hope such a course of proceeding may meet the favorable consideration of the legislature.

THE SAME.

APRIL 12, 1842.

To the Legislature:

I received, last evening, a preamble and a resolution, by which the legislature, after reciting my refusal to surrender Peter Johnson, Edward Smith, and Isaac Gansey, as fugitives from justice, and, after further reciting that I had assigned as the reason for that refusal that stealing a slave within the jurisdiction, and against the laws of Virginia was not a crime within the meaning of that part of the constitution of the United States which relates to the demand and surrender of fugitives from justice, have expressed an opinion adverse to the construction of that instrument which I had thus adopted.* The subject to which the resolution refers, is one exclusively of executive responsibility, the duties of this department, in regard to the demand and surrender of fugitives from justice, being prescribed, not by the constitution or any laws of this state, but by the constitution and laws of the United States. Nevertheless it is not only the right of the legislature, but it has always seemed to me to be proper, for them to express their opinion upon the subject, by way of advice, and such an expression is more proper when the adherence of this department to its decision has, with other causes, resulted in unconstitutional aggression and retaliatory acts by Virginia and South Carolina.

Grateful, therefore, to the legislature for the advice which has thus been received, I have considered it with the most respect-

* A whig legislature in 1840 had sanctioned the views and conduct of Governor Seward in this matter. The legislature of 1842, it will be remembered, was of opposite politics to that of 1840.—*Ed.*

in deference to their wisdom, and with an anxious desire for harmony and agreement upon a question in which the rights, interests, and honor of this state are deeply involved. After thus considering the subject, without the benefit, however, of any of the arguments which have brought the legislature to a different conclusion, I remain of opinion that a being possessed of the physical, moral, and intellectual faculties common to the human race, can not, by the force of any constitution, or laws, be goods, or chattels, or a thing, and that nothing but goods, chattels, and things, can be the subject of larceny, stealing, or theft; and that the constitution of the United States, so far from controverting truths which seem to me so obvious, acknowledges them, by carefully treating persons held in involuntary servitude, or bondage, not as property but as men, while the Declaration of Independence, expounding what to any mind may seem obscure in the constitution, declares that all men are born free and equal, and have inalienable rights to enjoy life, and liberty, and to pursue the way to human happiness. In view of the crisis at which our relations with other states have arrived, and of the close of the legislative session, it seems my duty to make no delay in submitting these views to the legislature.

I am requested by that body to communicate their preamble and resolution to the executive of Virginia. The constitution of this state declares that it shall be the duty of the governor to expedite all measures which shall be resolved upon by the legislature, and to take care that the laws are faithfully executed. But the legislature can not effectually resolve upon any measure, or impose a duty on the governor, except by bills passed both houses, and becoming laws by the executive approval, or by a constitutional majority, notwithstanding his objections. In proper cases I cheerfully comply with the requests of the senate and assembly, but I can not do so when a request conflicts with constitutional duties. I could not transmit the resolution in the present case, without silently acquiescing therein, and thus waiving a decision to which I adhere, or accompanying the communication to Virginia with a protest of my dissent. The former course would be a plain dereliction of constitutional duty; the proceeding, if the latter alternative were adopted, would not tend to enhance the respect in which this state is held by her sister-states and by the civilized world.

Cherished principles of civil liberty forbid me equally from recognising such a natural inequality of men as the resolution of the legislature seems to assume, and from contributing, in any way, to perpetuate the inequalities of political condition, from which result a large portion of the evils of human life.

The senate and assembly will, therefore, excuse me from assuming the duty which an assent to their request would impose, and will, if it be proper, select some other organ of communication with the executive authorities of our sister commonwealth.

REMOVAL OF THE SHERIFF OF SCHOHARIE.

ALBANY, JULY 6, 1842.

Complaints of official misconduct were preferred in March last by Joseph S. Johnson, against Cyrus Smith, Esq., sheriff of Schoharie county. Supplemental complaints were afterward filed. Notice of all the charges were given to the sheriff, and his answers were received. Instructions were given to the district-attorney to take proofs before a judge of the county courts of Schoharie. Testimony was taken and returned by the district-attorney, and the same has been considered, together with supplemental and explanatory depositions submitted by the parties; and Henry Hamilton, Esq., of counsel for the sheriff, has been heard in his defence.

It was complained that the sheriff had illicit intercourse with a female-prisoner; and that servants and persons employed by him had such communication with the same prisoner. The charge was denied by the sheriff. Although a person who was intrusted for a time with the charge of the jail endeavored to avoid being examined as a witness, and when examined testified in a very unsatisfactory manner, yet the proof was insufficient to convict him, and does not at all implicate the sheriff. This charge is therefore dismissed.

It was charged that Abraham Sloughter, while a prisoner on a complaint of petit larceny, was permitted by the sheriff to be at large and to frequent stores and taverns, and carried spirituous liquors to persons in the jail. The sheriff admits that the prisoner was at times employed in sawing wood out of the jail, but upon appurtenant premises and for use in the jail; and denies that the prisoner was otherwise at large, and that he furnished spirits to his fellow-prisoners. It was proved that the prisoner

was, by the sheriff's direction, employed in sawing wood for the jail—was seen several times apparently unemployed in the street, at a tavern kept by the sheriff near the jail, and at a grocery; and that on one occasion he sawed wood for an inhabitant of the village; and that he drank ardent spirits in the tavern, and once carried such liquor to another prisoner in the jail. It does not certainly appear that the sheriff, or the officer, having the prisoner in charge, knew that he was absent from the assigned labor. It may be believed that he never was so far distant from his keeper as to have it in his power to escape from custody; and it is proved that the sheriff had instructed the keeper to watch the prisoner carefully, and to let no ardent spirits be conveyed into the prison. Nevertheless, the sheriff violated a statute in directing the prisoner to be employed out of the jail, and strictly might be held responsible for all its consequences; yet if allowance is made for erroneous notions concerning the law in this respect, and for abuses of the sheriff's confidence by his agent, the charge may be dismissed without severe censure.

It was alleged that in the winter of 1841, the sheriff permitted two men to enter the prison-room in which two women were confined—one of whom was committed on a conviction of keeping a house of ill-fame. The sheriff denied this charge. It was inexplicit, and more than a year had elapsed before the complaint was made. The governor, upon receiving the sheriff's denial, decided that it was inexpedient to entertain the charge, and it was therefore dismissed without inquiry.

It was alleged that one of the females thus described was permitted to be at large in the public streets—but the transaction has been satisfactorily explained by the sheriff. He is, therefore, exonerated from this charge.

It was complained that James O'Brien, a prisoner charged with petit larceny, was permitted to remain days and nights in the same apartment with the same two females before mentioned. The sheriff admitted this fact, but offered by way of excuse that O'Brien was a lad of only thirteen or fourteen years—that his condition was such as to require maternal attention, for a reason which need not be stated, and for that reason alone he was put into the apartment with his mother. The district-attorney was directed to take proofs whether the prisoner was of so tender an age. It appeared in proof that he was a robust youth of fifteen

and a half years, but was represented by his mother to be of the age stated by the sheriff.

The statute peremptorily forbids confining persons of different sexes in one apartment. If, however, respect were paid to the spirit of the law rather than the letter, the sheriff might not have committed an impropriety in permitting the young man to be transferred to the room in which his mother was confined, but in that case some other apartment should have been assigned to her than one in which two other women were imprisoned, especially when she as well as the other females were of a vicious and depraved character, and one of them was under a conviction of keeping a house of ill-fame. The proceeding, therefore, was a violation of propriety as well as of the letter of the statute.

It was alleged that Abraham Sloughter, a prisoner charged with petit larceny, was confined in the same prison-room with two women, one of whom was committed for petit larceny, and the other had been convicted of keeping a house of ill-fame. The sheriff admitted this charge, but offered in extenuation that one of the women was Sloughter's wife—that they were all committed to the prison at one time by the complainant, who urged and persuaded the sheriff to confine them in one apartment.

Although the governor was of opinion that the sheriff's conduct, as thus explained, was censurable, he communicated to the district-attorney an opinion that if the transaction was truly represented by the sheriff, the complainant was guilty of duplicity, and that the sheriff's error would be overlooked, rather than what seemed to be an unworthy artifice of the complainant to injure the sheriff, should be crowned with success. The district-attorney was therefore required to take proof of the facts stated by the sheriff. It appeared in evidence that the complainant (who was a constable) on arresting several male and female prisoners living in one family, found it difficult to induce one of the women to go to the prison, and therefore promised her that he would use his influence with the sheriff to confine her in an apartment with her husband, and that he stated this promise to the sheriff, and advised him to put the family in one room. But the sheriff declined to do so; and the male and female prisoners were separated. The woman who was convicted of keeping a house of ill-fame was not committed till afterward—the male prisoner was not put into the room with the females until some

time later, and it was then done not in consequence of the complainant's advice or persuasion, but upon considerations of convenience in regard to lodging the prisoners. The testimony shows, however, that the male prisoner was removed from the apartment of the females after a day and a night.

William Samples was convicted of a second offence of petit larceny and was sentenced to be imprisoned two years in the stateprison at Mount Pleasant. The sheriff, at the prisoner's request made in a gross form, removed him from his proper jail-room to another apartment, and introduced into that apartment a woman, locked the door, and left them during the night, all other persons being excluded. The sheriff next morning dismissed the woman from the jail and restored the prisoner to his accustomed apartment, and the next day removed him to the stateprison. The sheriff pleaded, that as he had understood and believed the woman was the prisoner's wife. It appeared in evidence that the prisoner had a lawful wife living, whose proper home was about twelve miles from the jail — that he had been living two years with the woman admitted to him by the sheriff — that she was, and for years had been, a common prostitute, and though she had cohabited with the prisoner, yet she did not assume his name nor acquire the reputation of being his wife. These facts are notorious.

The sheriff's defence rests in his denial that he had personal knowledge of the prisoner's marriage, and his alleged belief at the same time that the woman admitted to the jail was the prisoner's wife. But, even if it were true that the sheriff did not know that the prisoner was not married to the woman admitted, or that the prisoner was lawfully married to another, yet that officer had abundant reason to know the prisoner's character and that of the woman admitted; and her admission under such circumstances, and for such an object, was not only a violation of law, but an indecent pandarism, scarcely capable of palliation.

But the sheriff's long acquaintance with the prisoner, and his constant residence in the place where the prisoner lived, raise a strong presumption that he could not have been ignorant of what was so well known to others; and it is proved by three witnesses that he knew affirmatively what others had known by rumor only.

Allowing full weight to his denial and to all the circumstances

detracting from the testimony of his accusers, there is still in the circumstances of the case and in direct testimony a preponderance against the sheriff's denial. Prisons and jails are the last places in which such demoralizing indecencies ought to be permitted. The public officer who does not prevent them abuses his trust, while direct countenance and agency in their commission deserve marked reprobation.

It appears, from this review of the case, that Cyrus Smith, Esq., sheriff of Schoharie county, is convicted of such misconduct. A supersedeas will therefore issue removing him from that office.

REMOVAL OF THE SHERIFF OF ONEIDA.

ALBANY, DECEMBER 19, 1842.

DAVID MOULTON, sheriff of Oneida county, in answer to charges of official misconduct, admits the following facts, to wit: That on the third day of January last, he presented to the governor a copy of an indictment, found by the grand jury of that county, charging a person then in the District of Columbia with having committed a crime, and a petition from the district attorney praying that a requisition might be issued to the said sheriff, authorizing him to demand and receive the accused as a fugitive from justice, and convey him to this state. That the governor, doubting the obligation of the president of the United States to comply with such a requisition, consented that the said sheriff should proceed to Washington and ascertain the president's opinion on that subject, and engaged to send a requisition to the sheriff on being advised of the president's acknowledgment of an obligation to surrender the fugitive. That the sheriff, having arrived at Washington, ascertained the president's willingness to surrender the fugitive, and communicated the fact to the governor; the sheriff received in reply a letter from the private secretary, informing the sheriff that the governor was absent from Albany, but that his attention would be called to the subject on his return. That the sheriff thereupon informed the accused of such an indictment, and that the sheriff was to receive a requisition authorizing him to convey the accused to New York; whereupon an agreement was made and executed between the sheriff and the accused, whereby the latter delivered to the sheriff two checks on the land-office amounting to $60, and notes amounting to $120, thus paying and engaging to pay the sum of $180. Of this sum the sheriff was to retain $80 for the expenses of his journey to Washington, and to pay the remaining $100 to the prosecutor of the indictment. The sheriff agreed to return to Oneida

county, and to obtain from the prosecutor a release of his demand against the accused if the checks and notes should be paid; one of the notes was drawn at five months — the other note and the checks were payable immediately. The sheriff admits that he left the checks and notes for collection with a friend in Congress, who was also instructed to take the expected requisition from the postoffice and send the same to the sheriff at Albany; that on his arrival at Albany he found a requisition on the president for the surrender of the fugitive, which process had been sent to and returned from Washington, as the sheriff had anticipated.

This process authorized the sheriff to demand from the president a surrender of the fugitive, and convey him to this state, and gave no other instructions, direction, or authority, whatever. The agent who executes such process is legally entitled to compensation at the rate of three dollars per day, and remuneration of all his necessary expenses, while performing the service. The sheriff further admits, that on receiving the requisition at Albany, he availed himself of it to claim and receive at the treasury payment of the expenses of his journey to and from Washington. The books in that department show that he received payment for the expenses of his journey from Rome, his place of residence, to Albany, thence to Washington, thence to Albany, and thence to his residence in Rome, and three dollars per day for each day of his absence from that place; the whole amounting to $130.50.

The sheriff further admits and shows, that after thus returning from Washington without waiting for the requisition, and leaving the accused at large, and after having received payment from the treasury for his services as agent of the state, he had an interview with the prosecutor, and proposed to him to accept the sum of $100, out of the avails of the checks and notes, and in consideration thereof release his demand against the accused; but that the prosecutor dissented and insisted on a greater sum as a condition of compromise, and the sheriff thereupon relinquished to the prosecutor all claim to the entire avails of the checks and notes, and took from him an assignment of the claim and transmitted it to Washington, to be released to the accused when the checks and notes should be paid.

Upon this statement of facts, the governor is of opinion: First, that although the sheriff, disappointed by the delay of the requisition, might have been excused for relinquishing the public

agency he had solicited and assumed, and perhaps might properly have returned to Albany and claimed payment for his time and expenses, yet that he committed a violation of duty in communicating knowledge of the indictment to the accused. The law declares that no grand juror, constable, district attorney, clerk, or judge, shall disclose the fact of an indictment to a person charged with felony and not in custody, and makes a violation of that enactment a misdemeanor, but expressly excepts sheriffs and other public officers, when they necessarily disclose the knowledge of an indictment in executing process or otherwise in the performance of an official duty. The spirit though not the letter of the law applied to the case under consideration. As if conscious of this, the sheriff offers in excuse, that being desirous of returning to New York, and being uncertain when the requisition would arrive at Washington, he disclosed the object of his mission with the purpose of inducing the accused to go voluntarily to New York, and give bail for his appearance to answer the indictment. The accused assented to the arrangement; but the sheriff receded from it, because he doubted whether, being without process, he could obtain reimbursement of the expenses of carrying the accused to New York. The sheriff's conduct, thus far, might easily be excused in consideration of the circumstances in which he was placed.

In the second place, the governor is of opinion that the sheriff was guilty of a palpable violation of duty in undertaking to compound the offence for which the accused was indicted. It is true the sheriff says he undertook only to settle the private claim of the prosecutor, but it is expressly admitted that the settlement was an *alternative* of the previous arrangement, by which the accused was to go to New York and give bail to answer the indictment; besides, the motive to the settlement, and its anticipated effect of silencing the prosecutor, were too apparent to be misunderstood by the sheriff.

The natural sympathy which even ministers of justice can not repress, might excuse this extraordinary proceeding of the sheriff, if no personal considerations mingled with those sympathies. But the sheriff stipulated to receive the eighty dollars for his humane agency in compounding the offence. The law declares that if any sheriff, jailer, coroner, marshal, or constable, shall wilfully or corruptly refuse to execute any lawful process

directed to him, requiring the apprehension or confinement of any person charged with a criminal offence, or shall corruptly and wilfully omit to execute such process by which such persons shall escape, or shall receive any gratuity or reward, or any security or engagement for the same, to procure, assist, connive at, or permit any person in his custody on any civil process, or on any criminal charge or conviction, to escape, whether such escape be attempted or effected or not, the officer so offending shall, on conviction, be adjudged to suffer fine and imprisonment, and be for ever disqualified for civil trusts.

It is not perceived how the sheriff could exempt himself from the application of the spirit of this statute, otherwise than by assuming the ground that he was beyond the jurisdiction of the state, and had no process whatever. But he was, nevertheless, consciously acting as an agent of the state. He was at Washington by virtue of verbal executive directions, which were to be authenticated by a requisition hourly expected; and on his return to Albany he presented that process to the comptroller, together with his affidavit that he had travelled to and from Washington, and sojourned there by virtue and in execution of the process.

Thirdly, the governor is of opinion that the sheriff was guilty of a want of moral honesty and official fidelity, in demanding and receiving payment at the treasury for duties which not only he had not performed, but which, to the scandal of public justice, for a pecuniary consideration, he had bargained not to perform. The sheriff excuses the delinquency by saying that he believed, from knowledge of the circumstances of the accused, that the notes received from him, amounting to $120, would not be paid, although the checks would be paid, and the avails of those checks might be paid to the prosecutor. But the state does not pay prosecutors, nor compound felonies, nor authorize sheriffs or agents to do so. The obligations of the state to pay the sheriff for executing its process, could not depend upon any such contingency as the failure of the accused to perform an illegal agreement into which he entered to screen himself from trial.

Fourthly, the governor is of opinion that the sheriff was guilty of improper conduct, in executing the agreement with the accused, by obtaining a discharge from the prosecutor; and deems it worthy of especial notice, that, in effecting that object, the

sheriff, although he had before been fully paid at the treasury, at first claimed $80 out of the avails of the securities in his hands and relinquished that claim only when the prosecutor insisted on having the entire sum of $180, as a condition of ratifying the agreement the sheriff had assumed to make.

The sheriff offers, in extenuation of his conduct, the facts, that since all the transactions happened which have been the subjects of animadversion, the accused, although insolvent, has satisfied and paid the prosecutor his demand, and has given bail to appear and answer the indictment.

It does not appear when, by whose agency, or with what motive, these recent acts of the accused were done. There is too much reason to suppose they were done after the complaints against the sheriff were made, or in view of them; and, whenever done, they can not affect the justice of the complaints.

Upon these grounds, the governor is of opinion that David Moulton ought to be removed from the office of sheriff of Oneida county, and a supersedeas will therefore issue.

OFFICIAL CORRESPONDENCE

THE VIRGINIA CONTROVERSY.

LETTER I.

TO THE LIEUTENANT-GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, September 16, 1839.

SIR: Having just arrived in this city, I find your letter of the 30th August last. I left Albany on the 30th July last. On that day and within an hour before my departure, Mr. Caphart delivered to me the requisition mentioned in your letter. I did not doubt on reading the requisition that the offence alleged against the accused was considered by you as one "deeply affecting the general interest of the commonwealth of Virginia;" and I may add that upon that ground as well as for the reason that it was the first requisition which had been made upon me on such a charge, I thought the subject deserved grave consideration. I learned from Mr. Caphart that the accused were at that time imprisoned in New York waiting my decision on the requisition, and that the slave alleged to have been stolen had been retaken by him and restored to his master before the requisition was made. No particular inconvenience seemed likely to result from delay, and previous engagements prevented my remaining here to examine the subject at that time.

The affidavit annexed to the requisition and containing the charge against the accused was in these words:—

"*Norfolk Borough, to wit:*

"This day personally appeared before me M. King, a justice of the peace of the borough aforesaid, state of Virginia, John G. Colley of said borough, and made oath that on or about the 15th instant Peter Johnson, Edward Smith, and Isaac Gansey, now attached to the schooner Robert Center, at present in New York, did feloniously

steal and take from the said Colley, a certain negro slave named Isaac, the property of said Colley. Given under my hand and seal this twenty-second day of July, one thousand eight hundred and thirty-nine. M. KING, *Mayor and J. P.*"

A hasty perusal of this paper raised doubts whether it sufficiently charged a felony under the laws of Virginia. I expected to arrive at Auburn within a few days, and determined to consider and decide upon the subject at that place. I thought it proper to specify the points in which the affidavit seemed defective in order that they might be supplied, if Mr. Caphart thought proper by a supplemental affidavit, which from his knowledge of the transaction I did not doubt he could make. Lest some misapprehension of my purpose might occur, I directed my secretary to deliver to Mr. Caphart the informal note mentioned in your letter, and to transmit a copy of the same to the sheriff of New York to be delivered to the accused. That note was as follows:—

"*Albany, July* 30, 1839.

"The governor has received on the eve of his departure from Albany, a requisition issued by the executive department of Virginia for the delivery of Peter Johnson, Edward Smith, and Isaac Gansey, as fugitives from justice. The papers annexed to the requisition are in some respects defective and unsatisfactory. Especially are they defective in proof that the persons demanded are fugitives from Virginia, and that they are in this state. The applicant may supply this proof. On the other hand, inasmuch as the offence is one of a grave character, and the requisition demanding the surrender of three persons supposed to be citizens of this state, is grounded not as is customary upon the finding of a grand jury, but upon a brief and somewhat unsatisfactory affidavit, the governor deems it his duty to give them an opportunity to be heard before deciding upon the requisition.

"The governor therefore directs that a copy of this note and also copies of the papers be delivered to the applicant, and that copies of the same be transmitted to the sheriff of the city of New York, who is hereby requested to deliver the same to the parties demanded, now said to be in his custody.

"The governor will receive any communication addressed to him at Auburn, and will pass upon the subject within a few days."

I left the city under the expectation that on my arrival at Auburn I should receive communications from Mr. Caphart and from the accused. But I can not say that Mr. Caphart had any other means of understanding that expectation than the intimation expressed in the note. I did not reach Auburn until after the expiration of fifteen days. I learned there from the public newspapers that the recorder of the city of New York had discharged the accused upon a writ of habeas corpus. I received no communication on the subject from Mr. Caphart, nor from the accused, nor from any person on their behalf, and I supposed the discharge had taken place on the ground that the requisition and affidavit were deemed by the recorder insufficient to justify the detention of the

prisoners. I inferred from Mr. Caphart's silence that he had abandoned the application, or that he acquiesced in the decision of the recorder. But for your letter of the 30th of August, I should have remained under this erroneous belief. I have made this statement at length, because the circumstances unexplained were calculated to induce a belief on your part that there had been neglect in answering the demand contained in the requisition.

Your communication calls me now to consider the application upon the papers as they were originally submitted to me.

With the most respectful deference, I still think that the charge contained in the affidavit annexed to the requisition is defective in substance, because it does not state the place nor the county, nor even the state in which the alleged felony was committed. The affidavit may be strictly true, and yet the felonious taking averred might have taken place in Maryland, or even in this state. It can not be said that the defect is supplied by the requisition, for the requisition assumes only to recite from the affidavit, "Whereas it appears by the annexed affidavit (which is hereby certified as authentic) that Peter Johnson, Edward Smith, and Isaac Gansey are fugitives from justice from this state, charged with felony." I am not prepared to admit that if the requisition contained all the necessary averments it would be safe to overlook the defects in the affidavit.

I very cheerfully concede, however, upon a more careful perusal of the paper, that the averment that the accused are "now attached to the schooner Robert Center, at present in New York," is sufficient to show that they were in this state at the time the requisition was issued.

I do not fear that you will consider my objections to the requisition and affidavit as technical or captious. The power of delivering fugitives is one of the highest importance, and deeply concerns the liberty and security of citizens. In such cases, statutory requirements and even technical forms of proceeding are safeguards against the arbitrary or capricious exercise of executive authority.

But it is by no means my wish to protract unnecessarily the correspondence on this subject, or to avoid a decision upon the important principle it involves. I beg leave, therefore, to state most respectfully that, even were I to admit that, the affidavit was sufficient in form and substance to charge the defendants

with the crime of stealing a negro-slave from his master in the state of Virginia, as defined by the laws of that state, yet in my opinion the offence is not within the meaning of the constitution of the United States. The words employed in the constitution, "treason, felony, or other crime," are indeed very comprehensive. It has long been conceded that citizens of the state upon which the requisition is made, are liable to be surrendered as well as citizens of the state making the demand; and it is further regarded as settled that the discretion of the executive in making the demand is unlimited, while the executive upon whom it is made, has no legal right to refuse compliance if the offence charged is an act of "treason, felony, or other crime," within the meaning of the constitution. Can any state at its pleasure declare an act to be treason, felony, or crime, and thus bring it within the constitutional provision? I confess that does not seem to me to be the proper construction of the constitution. After due consideration, I am of opinion that the provision applies only to those acts which, if committed within the jurisdiction of the state in which the person accused is found, would be treasonable, felonious, or criminal, by the laws of that state.

I do not question the constitutional right of a state to make such a penal code as it shall deem necessary or expedient, nor do I claim that citizens of another state shall be exempted from arrest, trial, and punishment, in the state adopting such code, however different its enactments may be from those existing in their own state. The true question is whether the state of which they are citizens is under a constitutional obligation to surrender its citizens to be carried to the offended state, and there tried for offences unknown to the laws of their own state. I believe the right to demand and the reciprocal obligation to surrender fugitives from justice between sovereign and independent nations, as defined by the law of nations, include only those cases in which the acts constituting the offence charged are recognised as crimes by the universal laws of all civilized countries. I think it is also well understood that the object of the constitutional provision in question was to recognise and establish this principle in the mutual relations of the states, as independent, equal, and sovereign communities. As they could form no treaties between themselves, it was necessarily engrafted in the constitution. I can not doubt that this construction is just.

Civil liberty would be very imperfectly secured in any country whose government was bound to surrender its citizens to be tried and condemned in a foreign jurisdiction for acts not prohibited by its own laws. The principle, if adopted, would virtually extend the legislation of a state beyond its own territory and over the citizens of another state, and acts which the policy and habits of one state might lead its legislature to punish as felonious, must be considered of that heinous character in another state for certain purposes, while for all other purposes they would be regarded as mere violations of moral law. In some of the states of the Union, adultery is made a felony; in another, the becoming a father of an illegitimate child is made a crime; and in another, marriage without license or other formalities is penal. To admit the principle that violations of these and similar laws, which are in their character mere municipal regulations adapted to the policy of a particular community, are "felonies" and "crimes" within the meaning of the constitution, would involve the most serious consequences by imposing obligations which it would be impossible to execute. It is evident there must be some limit to the description of "crimes" meant by the constitution; and that which I have applied in this instance seems to me to give full and fair scope to the provision, and at the same time preserve the right of exclusive legislation to each state over persons confessedly within its jurisdiction, while it preserves that harmony which is so essential to our mutual interests.

The offence charged in the affidavit before me, is not understood to be that of kidnapping a person, by which he was deprived of his liberty, or held in duress, or suffered personal wrong or injustice, but is understood to mean the taking of a slave, considered as property, from his owner. If I am incorrect in this supposition, the vagueness and uncertainty of the affidavit must excuse my error. But I think there can be no controversy upon this point. I need not inform you, sir, that there is no law of this state which recognises slavery, no statute which admits that one man can be the property of another, or that one man can be stolen from another. On the other hand, our constitution and laws interdict slavery in every form. The act charged in the affidavit, if it had been committed in this state, would not have contravened any statute, nor is it necessary to inform you that the common law, which is in force in this state when not abro-

gated by statute, does not recognise slavery, nor make the act of which the parties are accused in this case felonious or criminal.

It results from this view of the subject that the offence charged in the affidavit and specified in the requisition, is not a felony nor a crime within the meaning of the constitution; and that waiving all the defects in the affidavit, I can not surrender the supposed fugitives to be carried to Virginia for trial under the statute of that state.

So far as my knowledge extends, no state has ever admitted the federal obligation to surrender its citizens to extend beyond the limits I have mentioned, although demands have been made in cases similar to the one under consideration. If I entertained doubts of the justness of the views I have expressed, I should be very unwilling to establish a precedent so full of danger to the personal security of the citizens of this state.

I have addressed a letter to the recorder of New York, to obtain a statement of the grounds upon which the prisoners were discharged. This statement I will send as soon as it shall have been received. I have to regret that Mr. Caphart, when he waited upon me, did not inform me of the term of the conditional imprisonment of the parties accused. No matter how great the inconvenience might have been, I should have decided the question before the liberation of the accused, or otherwise should have taken measures for their further confinement until my determination should have been made known. This circumstance, however, becomes unimportant under the views I have presented.

To the Honorable Henry L. Hopkins,
Lieutenant-Governor of the State of Virginia.

LETTER II.

TO THE LIEUTENANT-GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, October 24, 1839.

SIR: I have the honor to acknowledge the receipt of your communication of the 4th instant, in answer to my letter of the 16th of September last. I have bestowed upon it all the consideration required by the acknowledged importance of the subject, and by the high respect due to yourself and the enlightened state over which you preside. My opinions having already been fully communicated, it remains for me on the present occasion only to notice some misapprehensions of them which appear in your letter, and to reply to so much of your argument as has not been anticipated.

You very justly observe that "neither the government nor the citizens of any other country can rightfully interfere with the municipal regulations of any country in any way;" and, in support of this position, you introduce the following extract from Vattel's Law of Nations: "It is an evident consequence of the liberty and independence of nations, that all have a right to be governed as they think proper, and that no state has the smallest right to interfere in the government of another. Of all the rights that can belong to a nation, sovereignty is doubtless the most precious, and that which other nations ought the most scrupulously to respect if they would not do her an injury."

It might, perhaps, be inferred from the earnestness with which these principles are pressed in your communication, that they had been controverted on my part. Permit me, therefore, to bring again before you the following distinct admissions: "I do not question the constitutional right of a state to make such a penal code as it shall deem necessary or expedient, nor do I claim that citizens of another state shall be exempted from

arrest, trial, and punishment, in the state adopting such code, however different its enactments may be from those existing in their own state." Thus you will perceive that I have admitted the sovereignty of the several states upon which you so strenuously insist. To prevent, however, all possible misconstruction on this subject, I beg leave to add, that no person can maintain more firmly than I do the principle that the states are sovereign and independent in regard to all matters, except those in relation to which sovereignty has been expressly, or by necessary implication, transferred to the federal government by the constitution of the United States. I have at least believed that my non-compliance with the requisition made upon me, in the present case, would be regarded as maintaining the equal sovereignty and independence of this state, and by necessary consequence those of all the other states.

The constitutional provision involved in the discussion is as follows: "A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

We agree, as I am very happy to perceive, in the position that the object of this provision was to recognise and establish between the states, as equal and independent sovereign communities, the mutual right and obligation to demand and surrender fugitives from justice, as they existed between independent nations by the law of nations. It is, therefore, of great importance to understand correctly the right and obligation as they exist in the law of nations.

You introduce and mark as especially important, the following extract from Vattel: "If the offended state has in her power the individual who has done the injury, she may without scruple bring him to justice and punish him. If he has escaped and returned to his own country, she ought to apply to his sovereign to have justice done in the case. And since the latter ought not to suffer his subjects to molest the subjects of other states or to do them an injury, much less to give open, audacious offence to foreign powers, he ought to compel the transgressor to make reparation for the damage or injury if possible, or to inflict on him an exemplary punishment, or finally, according to the

nature and circumstances of the case, to deliver him up to the offended state, to be there brought to justice."

With the most respectful deference, I can not admit that this authority supports the position you assume, to wit, that it is the duty of the state, upon which a requisition is made, to deliver up its citizens when charged with any crime, without reference to the nature of the offence. Vattel asserts that the state to which the offending citizen belongs ought, in some cases, to compel the transgressor to make reparation for the damages or injury if possible; that in others it should inflict exemplary punishment; and finally, that in others, to be determined by the nature and circumstances of the case, it must deliver him up to the offended state to be brought to justice. It is only asserted that an obligation rests upon the state to which the offending party belongs, not to suffer its subjects to molest the subjects of other states or to do them an injury, much less to give open, audacious offence to foreign powers. But it is not explained by the author in what cases that obligation may be discharged by compelling the transgressor to make reparation; in what cases by the infliction of exemplary punishment; and finally, in what cases the duty can only be performed by surrendering the offender to the offended state. If any inference can be drawn to direct us in the classification of these cases, it would seem to be that the classification must be made according to the severity of the different remedies prescribed; that the sovereign should compel the offender to make reparation, for *molesting the subjects* of another state, should inflict exemplary punishment for injuries to the subjects of another state, and should deliver up the transgressor for *open, audacious offence* to a foreign power. It is true that the constitution adopts only one of the remedies mentioned by Vattel. That one is the severe and final remedy of delivering the transgressor to the offended state. But it can not, therefore, be maintained that the constitution intends to prescribe the final remedy for all the offences mentioned by the author. The constitution speaks only of treason, felony, and other crimes; whereas Vattel's enumeration contains cases which do not fall within the legal definition of either treason, felony, or crime. There may be acts of molestation of the subjects of other states, and there may be injuries to such subjects which are merely personal and are the subjects of civil prosecution. In regard to all such

offences, it is to be inferred that the constitution rejects them as not requiring redress, or as proper to be left to the ordinary legal remedies, rather than that it constitutes them crimes and applies to them the final remedy before mentioned.

You have introduced also the authority of Chancellor Kent, whose opinions are as highly respected as his fame is universally cherished by the citizens of this state. "It has sometimes been made a question how far one government was bound by the law of nations, and independent of treaty, to surrender upon demand fugitives from justice, who, having committed crimes in one country, flee to another for shelter. It is declared by the public jurists that every state is bound to deny an asylum to criminals; and, upon application and due examination of the case, to surrender the fugitive to the foreign state where the crime was committed. The language of the authorities is clear and explicit, and the law and usage of nations rest on the plainest principles of justice. It is the duty of the government to surrender up fugitives upon demand, after the civil magistrate shall have ascertained the existence of reasonable grounds for the charge, and sufficient to put the accused upon his trial." If this language of Chancellor Kent's seems to support your position, I must beg leave to insist upon the whole of the chancellor's exposition of the subject. The chancellor continues the discussion by saying: "The only difficulty in the absence of positive agreement consists in drawing the line between the classes of offences to which the usage of nations does, and to which it does not apply, inasmuch as it is understood in practice to apply only to crimes of great atrocity or deeply affecting the public safety." In accordance with Chancellor Kent's exposition are the views presented by other writers of great authority. Grotius admits, that, for some ages past, the right of demanding fugitive delinquents has not been insisted on in most parts of Europe, except in crimes against the state or those of a very heinous nature. As for lesser faults, they are connived at on both sides, unless it is otherwise agreed on by some particular treaty. You will permit me here to say, with all respect, that it is the "usage of nations," as it is "understood in practice" that we are seeking to ascertain, and that the difficulty in the present case is the very difficulty mentioned by Chancellor Kent. The chancellor seems to consider that the difficulty was removed by an act of the legislature

of this state, which defined the class of offences to which, "in practice," the "usage of nations" applied. He says: "The act of the legislature of New York of the 5th of April, 1782 (ch. 148), gave facility to the surrender of fugitives by authorizing the governor in his discretion, on requisition from a foreign government, to surrender up fugitives charged with murder, forgery, larceny, or other crimes, which by the laws of this state were punishable by death, or imprisonment in the stateprison, provided the evidence of criminality was sufficient by our laws to detain the party for trial on a like charge." I admit that in the discussion of a question between Virginia and New York, growing out of a difference in their respective laws, it would be unreasonable to expect you to admit the authority of the legislature of this state. But, reference having been made by yourself to the authority of Chancellor Kent, it will not be denied that a legislative exposition adopted by the chancellor is entitled, at least, to the same weight as the individual opinions of the same learned author.

Having thus incidentally introduced this legislative exposition of the law of nations, you will permit me to say, that, as an executive officer of this state, I am bound to regard it with very great deference, and that the argument must be conclusive which shall prevail upon me to act in opposition to the principles of its provisions. The question under consideration, stated in the language of Chancellor Kent, would be, whether the crime mentioned in your requisition is a crime of "great atrocity or deeply affecting the public safety." I must respectfully insist, that I can not, as a magistrate and in a case involving the liberty of citizens of this state, admit that act to be a crime of this character, which the laws of this state do not pronounce to be even a crime.

You observe, in the next place, that "the principle is greatly enlarged in its application to those countries situated near each other, and whose citizens are engaged in constant negotiations or frequent intercourse the one with the other. In such cases, the duty of each sovereign to restrain his subjects from interfering with those of the other, becomes indispensably necessary to secure the blessings of peace and to avoid the evils of a constant state of war." I understand you, however, to maintain that this usage of the law of nations applies to every act which any state may choose

to declare a crime. It follows that the state may enlarge the application of the usage at its pleasure, without reference to the laws of the state whose citizens may become subjects of demand, without regard to the atrocity or dangerous tendency of the crime, and without reference to the general sentiments of mankind. I confess that it seems to me that the usage, if it be thus broad, is incapable of enlargement.

In the second place, the laws of nations, although they have not the forms, have all the certainty and universality of other laws, and can only be changed, as all other laws may, by the general consent of those by whom they are supposed to have been established. The application of the usage is the same, whether states are nearly or remotely situated, whether commercial or other intercourse between the citizens of such states is more or less frequent.

In support of the enlargement for which you contend, you quote from Vattel; "The matter is carried still further in states that are more closely connected by friendship and good neighborhood. Even in cases of ordinary transgressions, which are only subjects of civil prosecution, either with the view to the recovery of damages, or the infliction of a slight civil punishment, the subjects of two neighboring states are reciprocally obliged to appear before the magistrate of the place where they are accused of having failed in their duty. Upon a requisition of that magistrate, called letters rogatory, they are summoned in due form by their own magistrates and obliged to appear. An admirable institution, by means of which many neighboring states live together in peace and seem to form only one republic. This is in force throughout all Switzerland. As soon as the letters rogatory are issued in form, the superior of the accused is bound to enforce them. It belongs not to him to examine whether the accusation be true or false. He is to presume on the justice of his neighbor, and not suffer any doubts on his own part to impair an institution so well calculated to preserve harmony and good understanding between the states." The name of "letters rogatory," and the remark that this is "an admirable institution," and that it is "in force throughout all Switzerland," are sufficient to show, without other proof, that the usage or practice here described by the learned author is not an enlargement of the law of nations, but that it is a municipal institution established by

the contract of federation between the Swiss cantons, and that the law of nations is thus superseded by a written law, or, as we should term it, a constitution.

Assuming, however, that the usage of nations is thus enlarged in its application to states situated near each other, or between whose citizens commercial or other intercourse is frequent, you proceed to observe: "If this, then, be the law which experience has proven to be wise and salutary in its operation, and which ought to govern the relations of neighboring states ordinarily, and if the liberal and prompt surrender of fugitives from justice has been found to be so essential in preserving peace between them, surely every consideration of philanthropy, patriotism, and public duty, requires that no impediment should be interposed to its full and free operation among the states of our federal Union While I might, therefore, proceed to show that this principle of international law, in the absence of all positive agreement, applies in full force and with peculiar fitness to the relations of the twenty-six states of our confederacy, it fortunately becomes unnecessary to do so from the fact that the states themselves have long since converted the abstract principle into an express provision of their fundamental law." If it be implied that the institution of letters rogatory, which prevails in Switzerland, would be in harmony with our constitution, or consistent with the public welfare, I must respectfully dissent from that opinion. The Swiss institution, you will observe, regards not only all crimes, but also ordinary transgressions which are only subjects of civil prosecution, with a view to either the recovery of damages or the infliction of a slight civil punishment. Including not only all felonies, but descending below the grade of misdemeanors, the institution takes hold of seduction, replevin, ejectment, and every other form of trespass, and even trover, slander, fraud, and every form of trespass on the case, and, in short, every act denominated in law a tort. No matter how trivial the complaint, how private the injury, or how peculiarly it may be the subject of civil prosecution, the citizens of the states are reciprocally obliged to appear before the magistrate of the place where they are accused of having failed in their duty. "As soon as the letters rogatory are issued in form, the superior of the accused is bound to enforce them. It belongs not to him to examine whether the accusation be true or false. He is to presume on the justice of his neighbor,

and not suffer any doubts on his own part to impair an institution so well calculated to preserve harmony and good understanding between the states." I respectfully submit that the operation of such a system in this country, so far from maintaining peace and harmony between the states, would involve them in irreconcileable feuds.

The constitution of the United States confides to the courts of the United States the duty of affording redress between citizens of different states, for ordinary transgressions which are only subjects of civil jurisdiction, and the municipal arrangement existing between the Swiss cantons is as unnecessary as it would be inconvenient and dangerous.

You will not fail to remark moreover the very philosophical and sagacious author's observation that such is the effect of the institution of letters rogatory, that the several communities of Switzerland "seem to form only one republic." It was the object of our constitution, on the contrary, to maintain the states for all purposes except those of a federal character, and especially in relation to the administration of municipal laws, as separate, equal, and independent republics.

You state my proposition correctly in saying that according to my construction of the article, "the terms, treason, felony, or other crime," although comprehensive enough to embrace all criminal offences and to reach all fugitives from justice, must be so restricted and interpreted as to include only such offences as "are recognised as crimes by the universal law of all civilized countries." This restriction you can not but admit is more liberal than that applied by Chancellor Kent to the "usage of nations" when reduced to "practice." For he excludes all offences, which, although they are recognised as crimes by the universal laws of all civilized countries, are not offences of great atrocity or deeply affecting public safety.

The object of the constitutional provision was to provide for the delivery of persons charged with treason, felony, or crime. Suppose a requisition to be made for a person who has committed an offence which constitutes neither treason nor felony. The question then is whether the act charged is a crime. How is it to be decided? If we set aside Divine Revelation, it seems to me that it can only be determined by reference to the moral sense of men. That moral sense must be obtained not from the senti-

ment of one state or people, but from the universal sentiment of mankind, and this universal sentiment is most certainly inferred from the universal laws of civilized countries, for all civilized countries forbid what they deem to be morally wrong or injurious.

Proceeding to controvert the principle I have adopted by showing the inconveniences which may be expected to result from it, you observe: "Thus the citizens of Pennsylvania and Ohio may enter the territory of New York, and commit a thousand offences made criminal by your laws, to the great annoyance and injury of your people, but if they happen to be crimes peculiarly affecting the inhabitants of New York, or of a grade or character each 'not recognised as crimes by the universal laws of all civilized countries,' you may in vain demand their surrender. You may punish your own citizens for committing similar offences, but those of other states who entered your territory for the predetermined purpose of violating your laws, injuring the rights and disturbing the repose of your peaceful and unoffending countrymen, may flee from your state exulting in their crimes, and it is neither your right to demand nor the duty of their governor to surrender them for trial and punishment. Such a construction of the clause in question would utterly defeat the object of those wise and sagacious statesmen who framed the federal compact, and instead of promoting peace between the states, would, in my humble judgment, cherish a constant state of excitement and collision between them." Undoubtedly the principle must be mutual and must be applied to requisitions made by this state as well as to those made upon it. But I can not admit, as you are pleased to suppose, that there could be a thousand offences, or even one offence, which would annoy and injure the citizens of this state, and yet which should not be recognised as criminal by the universal laws of all civilized countries. Neither can I admit, that in cases of this kind the want of power to reclaim fugitives from justice would be so deplorable a calamity as you suppose, because in most cases the offender might be arrested and punished within the state. And as the chief object of punishment is not revenge nor retaliation, but prevention of crime, the occasional escape of a transgressor would not greatly affect the supremacy of the laws. Nor can I admit that the practical operation of the principle would be unequal in regard to the citizens

of the offended state and the citizens of other states. Both would be brought to punishment within the jurisdiction of the offended state, if arrested therein, and all would alike go unpunished if they should escape pursuit.

Let us now inquire what would be the consequences of your position. By the laws of this state the following offences are declared to be misdemeanors, that is to say, crimes of a grade lower than felony. They are not crimes of "great atrocity or deeply affecting the public safety," nor are they crimes "punishable with death, or imprisonment in the stateprison," so that they would not be subjects of demand under the usage of nations, as expounded by Chancellor Kent, or as recognised by the laws of this state. Petit larceny; extorting by threatening letters; making conveyances to defraud creditors; concealment of property by insolvent debtors: buying lands in suit; buying a pretended title; dispossessing occupants of lands under pretended process; levying on property under such process; racing animals near courts; contempt of court; malicious trespass on lands; malicious injury to fruit-trees; severing produce from soil; posting for not fighting a duel; posting for not sending a challenge; reproaches written or printed for not fighting a duel; intoxicated persons administering medicine; cruelty to animals; auctioneers neglecting to make reports; transacting business in the name of a party not interested; wantonly opening a lock on a canal; town-clerks neglecting to return names of constables; any violation of health laws; entering the quarantine ground without authority; keepers of boarding-houses neglecting to report foreigners arriving by sea; ferrying without license; selling goods by auction in violation of auction-law; auctioneer selling goods except in the daytime; adulterating distilled spirits, or selling such spirits; defacing mile-stones; cheating at play; winning or losing more than twenty-five dollars in twenty-four hours; driver of a carriage running his horses; negligently suffering fire to run beyond one's own land; setting up or drawing lotteries; selling, or buying tickets in such lotteries; racing of animals; and all offences against the laws relating to excise, and to the regulation of taverns and groceries. Undoubtedly the legislature of every one of the twenty-six states in the Union has defined about an equal number of petty offences. Can it be possible that the constitution intended to establish a system

of police, by which the citizens of the respective states should, at the pleasure of magistrates of other states, be transported as criminals from state to state, upon charges for offences of this description? Yet this must be true, unless in the language of Chancellor Kent, "a line be drawn between the classes of offences" to which the constitutional provision does, and to which it does not apply. In drawing such a line for my own guidance, I have looked in vain for any rule more safe, more liberal, or less calculated to give just offence than that insisted upon in my former letter, to wit, to confine the application of the constitutional provision to those offences which are forbidden by the laws of this state, and when the principles of these laws conflict with those of the laws of other states to refer the question to the test of the laws of all other civilized countries.

You observe "I do not mean to be drawn into a discussion of the abstract right of slavery, or to urge any arguments against the right or propriety of any nation or people to interfere with our domestic institutions. That, I assure you, sir, with all possible deference, is not with the people of Virginia a *debatable* question. Upon that subject I need only add, *Virginia knows her rights and will at all times maintain them.* But when we remember that slavery has existed in almost every civilized country since the foundation of the world, that it was recognised, and not forbidden, by the Savior of mankind, that it was for a long series of years recognised and tolerated by the legislature of New York, when its citizens were as *good*, *virtuous*, and *wise*, as they are *now*, that it has existed in this state continuously for more than two hundred years, that it still exists in one half of the states of this Union, and that it is recognised and tolerated by the constitution of the United States, the common government of all the states, you will pardon me for denying the claim of authority in New York to pronounce the laws of Virginia upon that subject null and void, because she has thought proper to abolish slavery within her own dominions." I am not aware, sir, that in the letter which I had the honor to address you, I manifested a disposition to invite you to a discussion of the rightfulness, abstract or otherwise, of slavery. You will excuse me, therefore, for confining myself within the range required by my argument, and from following, even as far as you have led the way into the discussion of a subject, which it is fair to infer from your protest

you do not consider to be necessarily involved in the question under consideration.

You proceed to say, "Is it true that the offence committed by Peter Johnson, Edward Smith, and Isaac Gansey, is not recognised as criminal, 'by the universal law of all civilized countries.' They are charged with *feloniously stealing* from John G. Colley, a citizen of this state, *property* which could not have been worth less than some *six* or *seven hundred dollars.* And I understand *stealing* to be recognised as *crime* by all laws human and Divine." It is freely admitted that the argument would be at an end, if it were as clear that one human being may be the property of another, as it is that stealing is a crime. On the contrary, however, I must insist, with perfect respect, that the general principle of civilized communities is in harmony with that which prevails in this state, that men are not the subjects of property, and of course that no such crime can exist in countries where that principle prevails as the felonious stealing of a human being considered as property. I do not intend here to draw in question the wisdom or the virtue of those states which establish an opposite principle. On this subject my opinions, as a functionary charged with the execution of the laws, are as unimportant as the subject is foreign from our discussion. It would be presumptuous if not discourteous to intrude them upon you.

I subscribe fully to the principle that it is of the essence of sound construction that the obligations of the constitution should be made to apply uniformly and equally to all the states, and their citizens respectively. Such uniformity and equality, permit me to say, can not be secured, if any state can extend the operation of the provision in question at pleasure, by making that criminal which is not prohibited by the laws of other states, or by the universal laws of civilized men.

In conclusion, I hope I have not been unsuccessful in showing that the principle I have adopted is in perfect harmony with the law of nations as adopted by the legislature of this state, as laid down by Vattel, and expounded by Chancellor Kent, and is most safe and proper in reference to the rights of citizens and the harmony of the Union. While I am required by the constitution to deliver up any fugitives from justice who may be found in this state, charged with having committed treason, felony, or other crime in any other state, I am also bound as an executive magis-

trate to respect the liberty and protect the rights of the citizens of this state. I admit that the constitution of the United States is paramount in this respect to the laws of both states, and that the word "crime" there employed, has its meaning independent of the legislation of either or both states. The charge you prefer against three citizens of this state, although a felony in Virginia, imports no crime in this state. In this conflict of legislation between the two states I have endeavored to refer to the only rules by which in my judgment the constitution can be expounded. The meaning of the constitution being thus ascertained, it seems my duty to decline to deliver the persons you demand, to be carried out of the protection of the state of which they are citizens, and tried for the offence charged upon them.

I have received from the recorder of the city of New York a statement of his reasons for discharging the three persons claimed as fugitives from justice, of which I herewith transmit a copy.

I have great satisfaction in reciprocating your assurances of high respect and consideration.

To the Honorable Henry L. Hopkins,
Lieutenant-Governor of the State of Virginia.

The Recorder of the City of New York to the Governor.

To his Excellency Governor Seward:

Dear Sir: In the case of the three colored men, Isaac Gansey, Peter Johnson, and Edward Smith, upon habeas corpus, who were discharged by me from imprisonment in July or August last, the facts as they appeared before me were as follows:—

The keeper of the prison returned that he detained the prisoners by virtue of a warrant of one of our police magistrates. This warrant charged them with being fugitives from justice from the state of Virginia.

The testimony upon which the warrant issued was affidavits swearing to the legal conclusion that they were "fugitives from justice." It was also shown that a requisition from the executive of Virginia had been forwarded to the governor of this state, demanding that the prisoners should be delivered up to the authorities of Virginia.

I then examined upon oath two gentlemen from Virginia who were present. One of them was the agent of the owner of the negro who was alleged to have been stolen, and the other assisted in retaking the slave. By reference to the papers before you in this case, you will observe that one or both of these gentlemen made the affidavits upon which the complaint was made in Virginia against the three persons claimed to be fugitives.

These gentlemen proved that the slave was a ship-carpenter employed in Virginia in repairing the schooner on board of which the three prisoners were hands; — that after the schooner sailed, the slave was not to be found; — that they by express reached the harbor of New York before the schooner arrived; — that they went on board the schooner and made known to the captain their suspicions that the slave was concealed on board. The captain denied all knowledge of the slave's being on board, and assisted in making search for the slave. The slave was found on board concealed among the live-oak timber. The three prisoners were the only colored persons on board.

This was all that these gentlemen could testify to of their own knowledge to show that the three men had stolen the slave. As the question involved much feeling, I

permitted the gentlemen to prove what had been told to them by others. One or both of the gentlemen testified that the slave informed them that *one of the prisoners observed to him* (the slave), *that he was foolish to remain in Virginia, as he could get good wages north*, and that this suggestion induced him to run away and secrete himself on board the vessel.

This was all that they pretended could be proved by any one else that showed any participation on the part of any of the prisoners in the escape of the slave.

I permitted this kind of evidence, not as testimony in the case, but to learn whether there was any testimony in Virginia or elsewhere that could implicate the prisoners in the charge preferred, and also to learn what reliance could be placed on affidavits swearing to legal conclusions.

I was satisfied that, according to the testimony, neither of the prisoners had committed an offence even against the law of Virginia, and that the testimony was not such as to authorize the detention of the prisoners. I therefore discharged them.

Very respectfully, yours, &c.,

ROBERT H. MORRIS,

Recorder of the City of New York.

LETTER III.

TO THE GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, November 9, 1840.

SIR: I have heretofore acknowledged the receipt of your communication of the 6th of April last, on the subject of the requisition for the surrender of Peter Johnson, Edward Smith, and Isaac Gansey, alleged to be citizens of this state, and charged with the offence of stealing a slave within the jurisdiction of Virginia. The communication was accompanied by a report of a committee of the house of delegates of Virginia, and the following resolutions of the general assembly:—

"*Resolved*, That the reasons assigned by the governor of New York, for his refusal to surrender Peter Johnson, Edward Smith, and Isaac Gansey, as fugitives from justice, upon the demand of this state, are wholly unsatisfactory, and that that refusal is a palpable and dangerous violation of the constitution and laws of the United States.

"*Resolved*, That the course pursued by the executive of New York can not be acquiesced in, and if sanctioned by that state and persisted in, it will become the solemn duty of Virginia to adopt the most decisive and efficient measures for the protection of the property of her citizens, and the maintenance of rights which she can not and will not, under any circumstances, surrender or abandon.

"*Resolved*, That the governor of this state be authorized and requested to renew his correspondence with the executive of New York, requesting that that functionary will review the grounds taken by him, and that he will urge the consideration of the subject upon the legislature of his state.

"*Resolved*, That the governor of Virginia be requested to open a correspondence with the executive of each of the slaveholding states, requesting their co-operation in any necessary and proper measures of redress, which Virginia may be forced to adopt.

"*Resolved*, That the governor of Virginia be requested to forward copies of these proceedings to the executive of each state of this Union, with a request that they be laid before their respective legislatures."

In compliance with the request of the general assembly of Virginia, I immediately transmitted to the legislature of this state, your excellency's letter and the very able report of the committee of the house of delegates of Virginia, with the following message.*

* See ante, page 385.

No action was had on the subject in the senate. It was referred to a committee in the house of assembly. That committee on the 14th of May made the following report:—

"Mr. Simmons, from the committee on the judiciary, to which was referred the message of the governor, transmitting the correspondence between him and the governor of the state of Virginia, on the subject of the delivery of certain citizens alleged to be fugitives from justice, reports, that by the constitution and laws, the power of causing the arrest of persons demanded as fugitives from justice, is vested in the executive, and his discretion in delivering up such persons, can not be controlled by any legislative action. Still, on a subject of such moment, in which the feelings, if not the interests, of a sister-state are involved, the governor of this state evinced a proper regard for those feelings, and a just deference to public sentiment, in submitting to the legislature the whole correspondence that had taken place between him and the executive of Virginia. On a careful examination of that correspondence, your committee can not discover any occasion for the interposition of this house, even by way of advice. They believe the positions taken by the governor of this state to be sound and judicious, and that his exposition of the meaning of the constitutional provision in question is the only one that can be given consistently with the sovereignty of the state and the rights of the citizens, while it is in strict conformity with our federal obligations to other states, and recognises all the rights which are intended to be secured.

"The committee content themselves with the expression of their general concurrence in the views presented by the governor, because the subject is one which can not be expressed with brevity, and because it has been examined and illustrated with distinguished ability. Conceiving that there is no occasion to submit any proposition to the house for its action, your committee ask to be discharged from the further consideration of the subject."

The committee was thereupon discharged. I regret that I am left without legislative advice to perform the duty of reviewing the grounds of my decision, in compliance with the wish expressed by the general assembly of Virginia. You have, however, rightly anticipated that that duty will be performed in a spirit of candor, and with an earnest desire to maintain the harmony which has heretofore existed between the people of Virginia and the citizens of this state. I am impressed with a deep conviction of the magnitude of the question, and while I acknowledge its importance in the view in which it is presented on your part, as a subject affecting the domestic institutions of Virginia, it assumes in my own mind a much graver character. It seems to me to involve not only essential principles of civil liberty and the federal relations of the states, but also their sovereign and reserved rights. The inquiry relates to the extent to which each state has surrendered the right, and relinquished the duty of protecting her own citizens; whether, in truth, the members of the confederacy have bound themselves to give effect to statutes of other states, by which actions, in themselves innocent or meritorious, may be converted into offences branded with infamy,

and whether the states have come under an obligation to surrender their citizens to be tried in foreign courts for such offences, and to be punished according to laws that may be abhorrent to their own principles of jurisprudence. It is the old question that has agitated the country since the adoption of the constitution, concerning what has been surrendered by the states and what has been retained. I must be permitted to express, with all due deference, my belief that if this question had arisen in any case not supposed to involve a peculiar interest of Virginia, that state would have been very unwilling to maintain a construction of the constitution, which, if it is not altogether misunderstood on my part, is incompatible with the true dignity and sovereignty of the states. Nor am I insensible of the delicacy and difficulty of this particular case, but, perceiving, as I believe, higher and greater interests behind it; interests of the deepest importance to the confederacy, and to each member individually; I have steadily kept the principle in view in its abstract form and most general application. A brief review of the correspondence and proceedings already had, will conduce to a better understanding of the points in issue.

The lieutenant-governor of Virginia saw fit to demand the surrender of three persons, charged by affidavit with the offence of stealing a negro-slave in the state of Virginia. The affidavit containing the charge was vague and informal. It was admitted that the slave had been retaken and restored to his master. Notice was given to the agent charged with the requisition, and to the accused, of a time and place when I would consider the application. In the meantime, the recorder of New York, a judicial officer of the state, without any correspondence or communication with me, discharged the accused upon a writ of habeas corpus, on the grounds that the testimony upon which the warrant had been issued was an affidavit to the *legal conclusion* that the accused were fugitives from justice; that it satisfactorily appeared, upon examination, that neither of the prisoners had committed an offence even against the laws of Virginia, and that the testimony was not such as to authorize their detention.

Notwithstanding the discharge of the accused, and the reasonable presumption that the lieutenant-governor was apprised of it, that functionary, without offering to amend the affidavit, or to supply the deficiency of proof pointed out by the recorder, de-

manded my decision upon the requisition. I again referred the lieutenant-governor to the defects in the affidavit upon which the requisition was issued, but inasmuch as no disposition had been manifested on his part to obviate that objection, or to relinquish the demand on the ground of informality or insufficiency in the evidence of the charge against the accused, I deemed it due to myself and to the grave importance of the question which the lieutenant-governor thus urged upon me, to meet it directly, and decide it upon the broad grounds of constitutional law. It seemed to me a matter of regret, that the lieutenant-governor had seen fit to select a case in which the offence was not charged with the usual formality, and with legal certainty and perspicuity, and in which my consideration of the subject was anticipated by the decision of a competent legal tribunal. It, however, properly belonged to the executive of Virginia to determine in what manner and on what occasion he would bring the subject before me, and these observations upon points heretofore waived, are made now only for the purpose of assigning the facts their proper place in the record, on an occasion in which the whole subject is opened for reconsideration.

I have assumed the ground that the constitutional provision under which the process issued, applied only to those acts, which, if committed within the jurisdiction of the state in which the accused is found, would be treasonable, felonious, or criminal, by the laws of that state, or to those acts which, although they might not be criminal within that state, were nevertheless made so by the laws of all civilized countries. I maintained that the object of the constitutional provision, was to establish, in the intercourse between the states, the principle of the law of nations, which recognised the mutual right and obligation of sovereign and independent governments to demand and surrender fugitives from justice. I had adopted the opinion of those jurists who maintain the existence of such a right, and such an obligation arising out of the comity of nations, if not from the natural principles of justice, although I was aware that it was denied by some eminent authorities, and was not practically recognised by our own government. I was also aware that the class of offences to which the principle applied, and the class to which it did not apply, had not been accurately defined, even by those who maintained its existence as a part of the law of nations, and I did not forget

that, perhaps from this cause, as well as from the facility with which positive stipulations are now substituted in the intercourse of nations for undefined rights, it had ceased to be practically enforced by the governments of the world. Yet the necessity of such a principle, its abstract justice, and its adaptation to states situated as these were, were so obvious, that I supposed these considerations to have governed the framers of the constitution of the United States, in the adoption of the provision which is found in that instrument.

In seeking the legitimate exposition of that provision, it seemed proper to recur to the principle as it had previously existed, and it appeared to me that a just interpretation of the formal compact would limit its operation at least to those cases which had previously been recognised by the civilized part of mankind as those only where a demand should be made.

I endeavored to show that the framers of the constitution could never have intended that all offences, of every degree and description, slight trespasses, violations of police laws, and of sumptuary provisions, should be included in the term "crimes," and that an interpretation must be adopted which would reconcile the claim in question with the protection due from the states to their own citizens, and with the opinions of the American people, without which the provision would be inoperative.

In endeavoring to arrive at the intent of the provision, it was important to recollect that the several states had very different criminal codes at the time of the adoption of the constitution; that certain acts, which were not the subject of criminal prosecution in any form in some states, were in other states marked by severe punishment; that local circumstances and peculiar manners might require in one state the creation of new offences, which would be repugnant to the policy or prevailing sentiments of another; and yet that, inasmuch as the people of the several states had chiefly the same origin, and had established similar forms of government, there were certain known and defined crimes which were recognised by all. I supposed it was the design of the states, in adopting the provision in question, to secure the punishment of such crimes. To give the greatest possible latitude to that provision, and comprise all those cases which did not come into direct conflict with the civil and criminal policy of this state, and which, therefore, could be recognised

without any violation of state sovereignty, I also conceded that a fugitive charged with an act that was felonious or criminal in the state to which he fled, might be demanded and surrendered. For the purpose of applying these principles to the case before me, I showed that the laws of this state did not admit the principle that one person could be the property of another, and, consequently, that they did not admit the possibility that one man could be stolen from another. I assumed that the laws of this state harmonized in all respects with the universal laws of all civilized countries, and I maintained that the case presented in the requisition was one not included among those in which, by the law of nations, a right to demand, and an obligation to surrender, existed between independent and sovereign states, and consequently, as an inference from these positions, that it was not a case within the meaning of the constitution.

I observe with regret, and certainly not without surprise, that you are at a loss to perceive the force or application of the arguments and inferences from the law of nations, and that you "advert to them only in order to bring our correspondence back to the narrow limits of which the constitutional question is susceptible."

The lieutenant-governor, in his reply, so far from questioning the force and application of these arguments and inferences, said: "Now, sir, these doctrines are so completely at war with what I understand to be the law of nations, governing the intercourse, the rights, and the obligations of separate and foreign countries, and by consequence yet more inconsistent with the friendly and federal relations of these states, as prescribed by a constitution of government fully considered and freely adopted by each in its sovereign capacity, that I can not agree, by remaining silent, to be considered as acquiescing for a moment in their correctness." The lieutenant-governor then proceeded to maintain, that by the laws of nature and of nations, one independent and sovereign community would be required to surrender fugitives to another in a case like the present. The authority of Vattel was cited by him, and marked with especial emphasis, as showing that if an offender has escaped and returned to his own country, the injured state ought to apply to his sovereign to have justice done in the case, and that since the latter ought not to suffer his subjects to molest the subjects of other states, or to do them an

injury, much less to give open, audacious offence to foreign powers, he ought to compel the transgressor to make reparation for the damages or injury, if possible, or to inflict on him an exemplary punishment, or finally, according to the nature and circumstances of the case, to deliver him up to the offended state, to be there brought to justice. It was insisted by the lieutenant-governor, that, by the law of nations, the right to demand and the obligation to surrender, even in cases of ordinary transgressions, were absolute in all cases whatever; and this position was fortified by extracts from the writings of Chancellor Kent, and by reference to the relations existing between the Swiss cantons. The lieutenant-governor expressly maintained that this principle of international law, in the absence of all positive agreement, applied in full force, and with peculiar fitness, to the relations of the twenty-six states of our confederacy; and he asserted the proposition as essential to his argument, that, in adopting the constitution, the states themselves had long since converted the abstract principle into an express provision of their fundamental law. Thus much, then, seemed settled; and if, as I trust, I was successful in showing, by reference to the authorities adduced by the lieutenant-governor, and by fair argument from the nature and purposes of the right and obligation, that the principle did not apply to the case under consideration, I submit I had a right to suppose the question conclusively settled.

I beg you to observe the remark made in my answer to the lieutenant-governor: "We agree, as I am very happy to perceive, in the position that the object of this (the constitutional) provision, was to recognise and establish between the states, as equal and independent sovereign communities, the mutual right and obligation to demand and surrender fugitives from justice, as they exist between independent nations by the law of nations." I confess it appears singular to me, that the application of the arguments and inferences drawn from the law of nations, should now be questioned, and more especially so, since your respected predecessor closed the discussion without correcting my misapprehension of the admissions of the lieutenant-governor, if they were misapprehended, and submitted the correspondence, in the shape it had then assumed, to the legislature of Virginia and to the world. Nevertheless, if it be now thought expedient on your part to abandon the grounds of national right and obli-

gation on which the lieutenant-governor sought to establish his demand, and to bring the discussion within the narrow limits by which, as your excellency maintains, the constitutional question is confined, I shall not object to such a course, because I am satisfied that the more fully the subject is considered in all its bearings, the more firm will be found the positions by which I have been governed in the decision of the case.

Your excellency makes an effort to simplify the question, by supposing that instead of adopting the constitution, the states of Virginia and New York, entered into a treaty with each other in 1787, and by that compact declared that "a person charged in *one* state with treason, felony, or other crime, who shall flee from justice, and be found in *the other* state, shall, on demand of the executive authority of the state from which he fled, be delivered up to the state having jurisdiction of the crime;" and you ask, could I doubt that New York would be bound to comply with her solemn compact, or that her refusal would justify Virginia in resorting to those violent remedies to which alone, under the law of nations, sovereign states can appeal; and you ask, further, whether the constitutional provision can be held less obligatory on New York or less beneficial to Virginia, because, instead of being a compact between two states, it is one, to the faithful observance of which six and twenty states have pledged themselves.

It is not perceived how the hypothesis thus put is calculated to elucidate the point. It is admitted that the provision is in the nature of a compact between sovereign and independent states. It is, however, only a part of the compact. The whole must be examined, and must be construed together, so that all the objects for which it was made may be attained, and effect given to every part.

This rule is recognised in your communication, by your reference to the third clause of the second section of the fourth article of the constitution, to illustrate the second clause. You do not quite assume the bold ground taken by the committee of the house of delegates, who insist in their report that the second and third clauses have the same object, the protection of slave property; and that the provision for the recapture of slaves would be incomplete, if there was not the right contended to be secured by the second clause, to demand fugitives from justice. Your argument, from the juxtaposition of the provisions in the consti-

tution, and from a similar juxtaposition in the law of Congress, which was enacted to carry them into effect, seeks to prove that the one provision is ancillary to the other. I can not, in any manner, subscribe to this view. The whole of the fourth article relates to what may be called the international rights of the states, and each section and clause of it is distinct and independent of the other. With singular brevity and precision, each provides for its own case fully and separately, without any aid from another clause. One would suppose, that if the power of demanding fugitives from justice was inserted as ancillary to that of recapturing slaves, it would follow the principal power which it was intended to sustain and enforce; but on the contrary, we find it not only in a separate provision, but first in order, and so little dependent on or connected with the clause respecting the delivery of slaves, that the latter might be stricken out without impairing the former. The assumption by the committee in their report, that the provision concerning the delivery of fugitives from justice was intended to cover more than appeared on the face of it; that southern statesmen manifested a wisdom and sagacity almost more than human, in providing not only for the recapture of fugitive slaves, but also an obligation to send back the offender who should steal a slave from his master, can not be conceded, because it is wholly unsupported by any account we have of the deliberations of the convention, and because it reflects unfavorably upon both the magnanimity of the southern statesmen, and the sagacity of others associated with them in that august council. I have carefully examined the debates of the national convention, and the proceedings of the state conventions by which the constitution was ratified: I have also referred to contemporaneous expositions, and more recent authorities, and I have nowhere found any grounds for supposing that the constitutional provision for the surrender of fugitives from justice had any reference whatever to the domestic institutions and interests referred to in your letter, or that those institutions or interests were at all concerned in its adoption.

The true question, then, it appears to me, is, whether the general terms used in the clause requiring the delivery of a person charged with treason, felony, or other crime, do or do not include the case of persons liable to punishment under the statute of Virginia for stealing a human being from another, who by the laws

of the state is the owner of the person stolen; and this turns upon the meaning of the word "crime." I can not admit, as is contended by the committee of the house of delegates, that the provision in question secures to one state the most unlimited right to demand, and imposes on another the most unqualified duty to surrender fugitives from justice. On the contrary, I find in the constitution itself evidence that its framers understood the import of the words used, and that those words were intentionally qualified. The fourth section of the second article provides that all officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. The addition of the term "misdemeanors" shows that in the opinion of the convention, offences of that nature were not included in the word "crimes." "Crimes" and "misdemeanors" have been distinguished by some writers thus: "Misdemeanor is an offence of a less atrocious nature than a crime. Crimes and misdemeanors are mere synonymous terms, but in common usage the word crime is made to denote offences of a deeper and more atrocious dye, while small faults and omissions of less consequence are comprised under the gentler name of misdemeanors." Similar to this is the distinction in regard to classes or grades of crimes, found in the writers upon the law of nations. The distinction made by Grotius is between "offences against the state, or those of a very heinous nature, or which deeply affect the public safety," and those which are called "lesser faults." Vattel divides offences into "crimes of great atrocity, or deeply affecting the public safety," on the one hand; and ordinary transgressions, which are "only the subjects of civil prosecution, either with a view to the recovery of damages, or the infliction of a slight civil punishment," on the other. If it were inquired what standard of definition would most naturally be consulted by the framers of a compact or constitution between twenty-six states which differed in their codes, I think it would be answered that the standard would be, not the code of one nor that of another of the states, but the universal law of civilized men, or at least the general laws which they all recognised.

I think there can be no serious dispute that there are some offences for which a fugitive can not be demanded. I will not further repeat what has been already urged in favor of recurring to what you will certainly admit, the analogous principle sup-

posed to be contained in the law of nations. I will merely observe now, that the reasons of public policy, of convenience, and of self-protection, which would render the establishment of such a rule at all necessary, would also furnish its limitations; and the fact that it never has been extended to other offences than those of an atrocious or heinous description, and such as were recognised to be of that character by the nation upon which the demand was made, affords the best evidence that there is no good reason for its extension to any other crimes.

But it is in the relations of the states to each other, and in the duty of a state government to its own citizens, that the most cogent reasons are found for denying the unlimited extent of the right to demand fugitives from justice. I have dwelt on this point at large in my former communications; and from the circumstance that the views thus presented have not been made the subject of reply either by your excellency or by the committee of the house of delegates, I am constrained to believe they have not been distinctly understood.

The proposition for which your excellency contends, the right to demand a fugitive from justice, charged with any crime known to the laws of the state making the demand, would so fatally disturb the relations of the states, as to defeat the principal object of the constitution, a more perfect union. There are laws now in force in some of the states, which would appear to the citizens of other states very absurd. Several months previously to the application of the lieutenant-governor of Virginia, which is the subject of this correspondence, a formal demand was made upon me by the governor of Pennsylvania, for the delivery of a fugitive charged with the offence of fornication, for which he had been indicted under a statute of that state. An application has also been made to me by the executive of New Hampshire to surrender a fugitive charged with adultery. These applications rendered it my duty to give the constitutional provision the most deliberate consideration, and that consideration has resulted in the adoption of the principles heretofore maintained in this correspondence. The requisition from Virginia came so clearly within these principles, that I could not grant it without departure from the course thus adopted. There is a law of our nature which would forbid the execution of any statute hostile to all our habits, opinions, and policy, and the attempt to execute it

would be fruitless, or would result in the dissolution of the Union, and instead of enjoying the more perfect union designed by our forefathers, we should become aliens and enemies. I shall not complain that, in every view of the case presented by Virginia, the personal security of the citizen is overlooked. As I have before contended, it is essential in the constitution of the United States and in that of this state, and indeed in the theory of republican government, that the personal security of every citizen is guarantied except in cases of treason, felony, or other crime. While the ground I assume seems to you to involve the principle that one state may, upon the plea of the universal law of civilized countries, excuse itself from surrendering for offences deeply injurious to the public welfare, or affecting the social condition of another state, by reason of its peculiar domestic institutions, it appears to have been altogether forgotten that it follows, from your position, that any state may declare any act, however harmless, to be a felony, and that every other state would thus be bound to acknowledge that act to be a crime, although by the provisions of its own constitution or laws, it may have declared the same act to be a duty. The legislature of any state might declare it a crime to omit to pay a debt, or to neglect to go to church, or to look upon a magistrate, or to instruct a slave, or to shelter or clothe a free negro. Even the crime of the fugitives in the present case may be, and if the report of the recorder of New York be true, is a constructive one. By the report of the committee of the house of delegates, I learn that the following are the provisions of the statute of Virginia, under which the present requisition was issued: "Whoever shall hereafter carry, or cause to be carried, any slave or slaves out of any county or corporation within the same, without the consent of the owner or owners of such slave or slaves, or of the guardian of such owner or owners, if he, she, or they, be a minor or minors, and with the intention to defraud or deprive such owner or owners of such slave or slaves, shall be adjudged guilty of felony, and subject to prosecution, as in other cases of felony, and upon conviction thereof, shall be punished by fine, not less than one hundred, nor more than five hundred dollars, and shall also be imprisoned in the jail or penitentiary-house, for a period not less than two nor more than four years, which fine and imprisonment shall be fixed and ascertained by a jury." And it is further enacted, "that not

only all those who shall willingly and designedly carry away slaves as aforesaid, but all masters of vessels, who, having a slave or slaves on board their vessel, shall sail beyond the limits of any county with such slave or slaves on board, shall be considered as carrying off or removing such slave or slaves within the true intent and meaning of this act." The committee, commenting upon this law, observe: "This statute was passed as early as 1753, and the only change which has been made in it, consists in the substitution in 1799, of confinement in the penitentiary in place of death without benefit of clergy, as the punishment for the felony created by it. Let it not be said that these laws are harsh. They are less sanguinary than they were at the adoption of the constitution. But if they be so, citizens of other states need not come, unless they choose, into Virginia, and if they do, they need not violate her laws, and incur their penalties." I certainly shall not violate the injunction of the committee, by asserting that these laws are harsh; for I freely admit, as I have repeatedly done, that the people of Virginia have sovereign power to establish any code of laws they deem proper. Courtesy, if no other consideration, would prevent me on this occasion from questioning the necessity or usefulness of laws so repugnant to the sentiments of the people of this state. I admit, moreover, most fully, that our citizens need not go to Virginia unless they choose; and that if they do, they need not violate her laws nor incur their penalties. But it will be conceded, that citizens of this state have the right to go to Virginia or elsewhere if they choose; and I must be allowed to insist that, although when in Virginia, they are liable to be tried, convicted, and punished, according to the laws established there, yet that according to the principles of morality and justice, recognised here, a criminal intent is essential to every felony, and that this state never could have intended, when adopting the constitution, to bind herself to surrender her citizens to be carried beyond her own jurisdiction and tried for constructive felonies created by law, and involving no moral guilt, contravening none of the principles of moral justice, and exempt from censure by the universal laws of civilized states. The power to enact such laws is equally possessed by all the states; the temptations and inducements to its exercise may arise in other states as well as in Virginia, and in that case the principle now asserted by your excellency might be made a most

effectual instrument of assailing those very domestic institutions and interests you are so solicitous to guard. In one state it has already been declared that, by its fundamental laws, no human being can be held as a slave within its boundaries. The same principle is established in this state, except so far as the constitution and laws of the United States require the surrender of a fugitive slave, held to labor or service in another state by the laws thereof, when demanded and upon proof that he is a slave. Suppose the principle should be enforced by a statute of any state, declaring that any person who should claim or pretend to hold another in involuntary servitude, should be guilty of a felony, and then suppose a citizen of Virginia travelling with his slave in the state having such laws and incurring this penalty, should be demanded of your excellency, on his return to Virginia, as a fugitive from justice. A refusal, it is presumed, would be immediately pronounced; a collision would ensue, if the state making the demand were to insist upon the principle you now maintain, and this would probably bring on measures of restriction, inspection, and reprisal, which might soon involve the whole confederacy in a general conflict.

I can not but think that a fair and candid review of these considerations will induce your excellency's concurrence in the opinion, that the constitutional provision in question is to be construed by the same general rules which are applicable to all laws, treaties, and compacts; that it is to receive a reasonable construction; that it is to be considered not singly, but in connection with all the other provisions of the same instrument; that full and fair effect is to be given to each of them, so that no one shall be so applied as to destroy any other, and much less to defeat the main object of the instrument itself, but that all shall be satisfied and reconciled as nearly as possible; and if it is found impracticable to give the full effect which the utmost latitude would allow to any one stipulation, that then the more important shall prevail. These maxims, rendered necessary by the imperfections of human language, and sanctioned by the wisdom of ages, if applied to the constitution in the spirit in which it was framed, will enable us to fulfil all its obligations, and enjoy all the blessings it promised and has bestowed.

In giving to the particular provision under examination a reasonable construction, such as will fulfil the general design of

all the states at the time of its adoption, instead of affording protection to peculiar interests, without violence to moral sentiments, the civil policy or settled principles of any state, it seems to me that all is accomplished that can be expected of any human ordinance.

You ask, who is to decide whether the crime charged in a requisition is against the state, or of such a heinous nature as to bring it within my definition; and you suggest that the doctrines for which I contend would establish a very inconvenient and totally impracticable rule. I can not admit that the science of jurisprudence is so imperfect and vague as you suppose. The principles of a moral law were written by the hand of God in the heart of man. The light of revelation brings them out in bolder relief, and I apprehend that on examination of the common law, the civil law, and the statutes of all civilized and Christian countries, it will be found not only that murder, treason, arson, burglary, forgery, perjury, rape, incest, bigamy, and the like, are "crimes," but also that they are neither "lesser faults," nor "ordinary transgressions," while adultery, petty stealing, libels, trespasses upon lands, and the like, are not regarded as "crimes of great atrocity, or deeply affecting the public safety."

Your excellency observes, that there are domestic interests of a peculiarly delicate nature involved in this question, and that Virginia can not admit the right of New York, or of any other state, to call in question either the legality or policy of her domestic institutions. I trust I have sufficiently showed, that however the interests alluded to may have become involved in this discussion, it has happened through no act or design on my part. The principle I have maintained was asserted upon a conviction, yet unshaken, that it was necessary for the protection of the domestic rights of the citizens of this state, and from no desire to invade or assail the institutions of other states. If, therefore, those interests have become involved, it is because a constitutional provision, intended for general purposes, without reference to them, is sought to be extended so as to furnish an additional guaranty and safeguard for their protection, beyond those expressly established by the constitution.

The committee of the house of delegates in their report, refer to the terms in the constitution, "treason, felony, or other crime," as common-law terms, and very properly remark, that they must be taken to have been used in a common law sense. I am

inclined to think that a fair application of this rule of construction would relieve the subject of most if not all of its difficulty. The common law was, as the committee state, the law of the land in each of the states which were parties to the constitution, and the terms of that law were familiar to its framers. Its principles were no less familiar, and particularly those which related to crimes. The authors of the constitution knew the offences for which punishment had been prescribed, and the grades of those offences. There was a common standard, which all parties understood, and to which they could refer, and if that standard is to be considered in reference to the grades and denominations of offences, there would seem a still greater propriety in referring to it to ascertain what were the acts which by that law were deemed crimes. It may be fairly presumed that those acts were contemplated by the convention, when it provided for the delivery of fugitives; and it may, with equal fairness be presumed, that no others were intended to be provided for. It can hardly be necessary to remind your excellency that, by the common law of England, one man could not have property in another, and that larceny could not be charged of carrying away a human being. The kidnapping of a man was an offence against the person himself, and not against any right of property. If, then, we are to look to the common law for an exposition of the meaning of the convention, it would seem quite clear that the provision in question was never intended to embrace such a case as that presented by your predecessor. This view of the subject is substantially the same taken in my former communication, where I referred to the universal laws of the civilized world, as affording the means of determining the kind of offences intended to be included in the constitutional provision. The common law of England may be said to define those offences which the laws of the civilized world recognise as deserving punishment at all times and in all countries. A desire to avoid the appearance of technicality induced a description of those crimes by a reference to the laws of the civilized world, rather than to the system of a particular country, although that system is acknowledged by us to be the most perfect which has existed among men.

I am referred, by your excellency, to the case of Clark, decided by the supreme court of this state. With due respect, I can not perceive its bearing on the question at issue. The court held,

that where the executive of this state had issued his warrant for the surrender of a person charged with a highly criminal offence, committed in Rhode Island, they would not examine into the alleged crime, but that the responsibility of determining whether an offence was charged, devolved upon the executive of whom the demand was made, and had been discharged by him. The question whether the alleged offence was a crime recognised by the laws of New York, was not even raised in the case, and was not discussed by the court. In fact, the offence was one familiar to our laws, and there was, therefore, no occasion to examine the nature of the crime charged. I have been unable to discover, in the reasons assigned by the learned chief justice, any ground for supposing, that the supreme court intended to intimate that the governor of this state was bound to submit his judgment, in regard to the class of cases falling within the constitutional provision, to that of the executive by whom the requisition was made. Indeed, the principle that the decision upon the obligation to surrender fugitives demanded, rests with the executive upon whom the demand is made, is recognised as applicable not only to the case of Clark, but to every case in which the question could be raised.

You refer, also, to a decision of the supreme court of this state, recognising the constitutional right of the citizen of another state to reclaim his fugitive slave, and you remark, that you are unable to discover, why I should refuse to surrender fugitives from justice charged with stealing a slave, when the obligation to surrender the slave himself, is emphatically sustained by the highest judicial authorities of this state. The answer seems to me, both obvious and conclusive, and is found in the difference between the constitutional provision concerning fugitive slaves, and that which relates to fugitives from justice. In the first of these cases, the laws of the states concerning slavery are recognised by the constitution: "No person held to service or labor in one state, under the laws thereof, shall be discharged from such service," &c. The other constitutional provision makes no reference to the laws of the state from which the fugitive flees, but leaves its terms open to construction upon general principles, like any other form of expression in the instrument. There are good reasons for the difference in the language of these provisions. The section in regard to fugitive slaves, relates to a civil right

of a citizen, for the establishment of which, the courts of the state where the person claimed as property may be found, are opened to him. In the other case, a public wrong is alleged to have been committed, and the free citizen of a state is demanded, that he may be tried and punished in the jurisdiction of another state, and under its laws. They are, then, as different as the assertion of a private right, and the punishment of a public offence. A citizen of Virginia may be prosecuted in our courts for publishing a libel in this state, but I doubt much, whether, if he were indicted here and demanded as a fugitive from justice, your excellency would be bound to surrender him in compliance with the requisition. The provision concerning fugitive slaves, can, in no case, affect the rights of any citizen of this state, because no such citizen could be a slave in another state, or be "held to service or labor" therein. But the clause concerning fugitives from justice, embraces citizens of this state, whose liberty is dear to her, and is guarantied by her constitution.

It was not the least among the subjects of complaint by our ancestors against the British king, that he had combined with others to subject them to a jurisdiction foreign to their own constitution, and unacknowledged by their laws. It is not to be supposed, that those who had delivered themselves by force from that intolerable oppression, would have perpetuated it in another form. While it is freely admitted that this consideration can not impair in any way the constitutional provision concerning fugitives from justice, it is believed to be not irrelevant, for the purpose of showing that the provision was designed for the equal and mutual protection of all the states, not for the peculiar advantage of one or more, and that consequently, it ought not to be extended by latitude of construction so as to impair the sovereignty of the states, or to deprive their citizens of the protection of their own laws and tribunals.

Your excellency is pleased to observe, that the positions I have assumed would lead certainly to my conclusions, that the states of our Union have fatally impaired their original rights by adopting the federal constitution, without preserving any adequate means for adjusting questions which must necessarily arise between them; that if the correlative rights and duties of the states of the Union are to be determined only by reference to the vague principles of international law, having surrendered the

powers which they once possessed of declaring war and making treaties, they have deprived themselves of the only sanctions by which their rights can be protected, or their wrongs redressed; and that they have effectually yielded the substance, and retained only the shadow of that sovereignty which I so readily conceded to them. I am at a loss to find in what part of this correspondence I have admitted it as a just conclusion from my positions, that "certain original rights" of the states are not only impaired, but are "fatally impaired," because no adequate means were preserved for the adjustment of questions which must necessarily arise between them. The "original rights" supposed, are those the states enjoyed as independent and sovereign communities at the time of the adoption of the constitution, or, in other words, the rights recognised by the law of nations as those of sovereign and independent states. Although the lieutenant-governor maintained, that by the law of nations, one state might lawfully demand, and another was legally bound to surrender, a fugitive from justice charged with the crime of stealing a slave, I do not discover that your excellency affirms this proposition. Relying, therefore, upon my former argument on that subject, I repeat that what is claimed by the executive of Virginia in the present case, is not one of the original rights supposed. The question may be tested at once by supposing that a citizen of Great Britain had "stolen" the negro-slave in question. If the claim for the surrender of the fugitive be such an original right as is supposed, the refusal of the British government would be a just cause for war. I apprehend, with all due respect, that the federal government, even if it were accustomed to exercise the power required, would not feel itself called upon to demand the fugitive, and that neither the British government, nor that of any other foreign state, would in such a case admit an obligation to surrender, nor would the sense of mankind justify a resort to war in case of refusal. But perhaps the "original right" supposed to be so fatally impaired, is the right to negotiate for the surrender of fugitives. I have already attempted to show in this correspondence, that the right secured to each state by the constitution to demand fugitives from justice, if that right be defined so as to include cases of treason, felony, or any other offence made criminal by the universal laws of all civilized countries, is as broadly extended as would be consistent with the peace and harmony of

the Union and the security of the citizens of the several states. With submission, it seems to me that the right of negotiation could not be said to have been unprofitably surrendered, even if it had been exchanged for the constitutional right of recapture, as I have defined it. While it is not necessary to deny that questions might arise between the states from a desire on the part of some of them to enlarge the definition of cases in which the right to demand fugitives should be conceded, it can not be improper to express my conviction, fortified by your own admission, that under existing circumstances, negotiation upon the present question would probably prove unavailing. It thus appears, I think, that the claim for fugitives for the offence under consideration, is not an "original right," because no state had originally a right to make war to enforce it, and consequently that the states of our Union have not "fatally impaired" any "original right," by adopting the constitution, without preserving adequate means for the adjustment of questions which may arise between them. But is it true in fact, that the right of negotiation was surrendered? The constitution provides a practicable mode of negotiation upon every question which can arise between the states, by permitting amendments of the compact between them; and if it be said that it is encumbered by requiring the assent of three fourths of the states, it is a sufficient answer that it seemed to the states wise to establish that safeguard against innovation.

I can not close this communication without assuring your excellency that the delay which has occurred in making this review of the subject of my correspondence with your predecessor, has resulted from circumstances altogether beyond my control, and in no manner from any want of respect to the legislature of Virginia. Having now discharged that duty with consideration, as I trust, of the importance of the subject, and of the rights and interests of the people of Virginia involved in the discussion, as well as with a proper regard to the sanctions of the constitution, and my obligations to the people of this state, I very cheerfully abide such further examination of the principles I have adopted, as they may receive from the other states, whose attention is invoked by the state of Virginia.

I pray your excellency to accept the assurance of the sincere respect with which I remain, your obedient servant.

His Excellency Thomas W. Gilmer, *Governor of the State of Virginia.*

LETTER IV.

TO THE GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, November 10, 1840.

SIR: I acknowledge the receipt of your letters of the 23d of October and of the 5th instant. My answer to your previous communication was sent yesterday. I acknowledge, with many thanks, the kindness you have manifested during the unavoidable delay which has occurred, and I earnestly hope that no public inconvenience will result from it.

Your excellency is pleased to observe, that I have been misled into error in reference to the course which I supposed Virginia to have taken in anticipation of the ultimate consequences of my declining to comply with the requisition of your predecessor, and you insist that I have done injustice in ascribing to him, in my annual message to the legislature of this state, a menace of secession from the Union. The language of your predecessor to which I alluded on the occasion referred to, was as follows. It is an extract from his message to the legislature of Virginia:—

"I feel that I owe you an apology for addressing anything in the way of argument to you, for the purpose of exposing the unsoundness and fallacy of the construction assumed and acted on by the governor of New York.

"It is very much to be deplored, that when the excitement of the public mind in the south, justly caused by the unwarrantable assaults upon our institutions and our rights, by organized societies in the states having no slaves, was beginning to subside, the executive of so powerful and influential a state as New York, should have adopted a construction of the constitution which has induced him to disregard one of its imperative requisitions, upon grounds so well calculated to inspire the infatuated abolitionists with new hopes and fresh zeal in their unholy crusade against our property and our peace, and at the same time to assure them of immunity and protection from responsibility for the violation of our laws.

"But this question has been raised in a practical form between this state and New York, and between Georgia and Maine. And it behooves us to meet it at once, and to insist upon our rights at every hazard. It is the duty of Congress to remove any ambiguity, if there be any, in the laws made to carry into effect the provisions of the constitution for the surrender of fugitives; and if there be no defect or ambiguity in those laws, to provide for the prompt and faithful execution of them, by confiding the execution to those whose interpretation of their duty is consistent with our rights

and the behests of the constitution. If redress for these wrongs, and security against their repetition, can not be procured in either of these modes, it will behoove the general assembly to consider whether their own legislative power will not furnish means of securing the states against such flagrant invasion of their rights, without infringing the restrictive provisions of the constitution of the United States. If there be no such means compatible with their obligations to the Union, it may ultimately become our *imperative and solemn duty to appeal from the cancelled obligations of the compact to original rights and the law of self-preservation.*"

My remarks on the subject were as follows:—

"The governor of Virginia, in his last annual message, referred the subject to the consideration of the legislature of that state, and declared that my construction of the constitution of the United States could not be acquiesced in or submitted to. He added, that if it were allowed to prevail, and no relief could be obtained against what he designated as a flagrant invasion of the rights of Virginia, either by an amendment of the constitution of the United States, or by the action of the legislature of Virginia, it might ultimately become the imperative and solemn duty of Virginia to appeal from the cancelled obligations of the national compact to original rights and the law of self-preservation.

"I confess my surprise that it should, in any part of the Union, be regarded as a new and startling doctrine, that the constitutional power of the executive of any other state to demand the surrender of a citizen of this state, to be carried to the former, and tried for an offence committed there, is limited to cases in which the offence charged is recognised as criminal by the statute laws of this state, by the common law, or by the universal laws of mankind. Nor can I withhold the expression of my sincere regret, that a construction of the constitution manifestly necessary to maintain the sovereignty of this state, and the personal rights of her citizens, should be regarded by the executive of Virginia, as justifying, in any contingency, a menace of secession from the Union."

However erroneous my apprehension of your predecessor's meaning may have been, I trust I need not assure you that it was impossible for me to intend unfairness or discourtesy toward him in submitting his views of the important subject to the representatives of the people of this state. I confess, that before receiving your excellency's letter, I had labored under the belief, that in stating that it might ultimately become the imperative and solemn duty of Virginia to appeal from the cancelled obligations of the compact to original rights, and the law of self-preservation, your predecessor intended to be understood as intimating the possibility that Virginia, in the event of the failure of all the modes of redress suggested by him, might ultimately adopt that of secession. Nevertheless, since your excellency assures me that my inference was erroneous, I have great pleasure in acknowledging my satisfaction with the explanation, although your excellency has, doubtlessly through inadvertence, omitted to explain what was the true understanding of the expression misapprehended. I shall not fail to communicate the explanation to the legislature of this state, not only because I desire to do no injustice to your predecessor, but also because I deem it very important that the

views of the state of Virginia in relation to every part of the subject should be fully and fairly understood by the legislature, and by the people of this state.

Your excellency, on the other hand, is pleased to submit to me whether, by the position assumed in this discussion, this state has not virtually withdrawn herself from the obligations of the Union, and nullified a law of Congress admitted to be constitutional. Having, in my communication transmitted to you yesterday, reviewed all the material questions which have been presented on the part of the state of Virginia, and having no reason to doubt that your excellency will allow to my conclusions their just weight, it will of course not be expected that I should answer your excellency's question at length. It will be sufficient to remind you, that according to the views I have adopted, the true positions of the parties are these: The executive of Virginia demands what is not authorized by the constitution, and the executive of this state declines compliance with the unconstitutional demand. It is not without sincere regret that I perceive that, in persisting in this demand, the state of Virginia protracts a question of deep and exciting interest—a question which, if I had not assurances both in the moderation already shown on the part of the state of Virginia, and in the character of the American people, that it will be conducted in a spirit of candor and mutual conciliation, I should very much fear might prove injurious to the harmony of the Union. Virginia proposes to take the sense of her sister-states upon the fidelity with which New York performs her federal obligations. What this sense will be, will depend undoubtedly upon their judgment concerning the construction of those obligations, which, acting as her representative, I have adopted.

Accustomed to inquire carefully concerning my own duty, and to perform it conscientiously when ascertained, I am content now to leave the subject, without looking to ultimate or possible consequences, the contemplation of which ought not to affect my decision, and the responsibilities of which belong in no measure to myself.

I beg your excellency to accept the assurances of my sincere respect and consideration.

His Excellency Thomas W. Gilmer,
Governor of the State of Virginia.

LETTER V.

TO THE GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, March 25, 1841.

A communication has been received from his excellency the governor of Virginia, which is as follows:—

"EXECUTIVE DEPARTMENT,
"*Richmond, Virginia, March* 16, 1841.

"A demand from the governor of New York for the surrender of Robert F. Curry, charged with the crime of forgery under the laws of that state, was this day presented by John D. Dix, the accredited agent of the executive of New York, together with a duly certified copy of an indictment found by the grand jury of Tompkins county, in the state of New York, against the said Curry; and it being stated that the said Curry has been arrested, and is now in custody within the jurisdiction of this commonwealth, it is ordered that the demand for the same Robert F. Curry is in proper form, and will be complied with whenever a similar demand for the surrender of Peter Johnson, Edward Smith, and Isaac Gansey, heretofore charged with felony under the laws of this state, shall be complied with by the governor or other authorities of the state of New York.

"It is further ordered to be certified to the governor of New York, that measures will be taken for the detention of the said Curry for six months from the time of his arrest, a period sufficient, it is hoped, to enable the authorities of that state to determine whether the constitution and laws under which this demand is made, are of as binding force on the state of New York as on the state of Virginia.

"By order of the governor.
"WM. H. RICHARDSON, *Sec'y Com'th.*"

From this communication it appears that notwithstanding the constitution and laws of the United States have provided that "a person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime;" and although the requisition is admitted to be in due form, and the charge is fully and properly presented by indictment, and the fugitive is in actual custody in the state of Virginia upon the said charge, and although the crime alleged against him is, and always has been, regarded as a felony or high

crime by the laws of Virginia as well as by those of this state, and by the laws of the several states in the American Union, and by those of all civilized countries, yet that the governor of Virginia has seen fit to make his compliance with the requisition dependent upon the condition that the executive of this state shall first surrender Peter Johnson, Edward Smith, and Isaac Gansey, in compliance with a requisition made in the year 1839, by the lieutenant-governor of the state of Virginia, acting as governor of that commonwealth.

The governor of Virginia has been pleased to assure the executive of this state, that the fugitive demanded by him shall be retained in custody for a period of six months, to afford time for the executive of New York to decide upon the question thus submitted to him.

It would be manifestly improper that the fugitive should be withheld from the violated justice of this state, or be detained in custody in Virginia under laws against which he has not offended, in consequence of any unreasonable delay on the part of the authorities of this state in replying to the communication of the executive of Virginia. His excellency the governor of Virginia, is therefore respectfully informed, that by reference to papers heretofore transmitted to him and his predecessors, it will be found, that before the requisition for the said Peter Johnson, Edward Smith, and Isaac Gansey, came under the consideration of the executive of this state, those persons were by a competent judicial officer, discharged from arrest upon a writ of habeas corpus, which is a writ secured by the constitution to every citizen of this state, because the papers were defective and insufficient even to charge an offence against the laws of Virginia, and that when the said requisition came before the executive of this state, it was decided that the charge was in form defective; and that even if that objection were waived, acts of the description of those laid to the charge of the supposed fugitives were not made felonious or criminal, either by the laws of this state or by the common law, or by the laws of all civilized countries; and for these and other reasons fully set forth, it was the opinion of the executive of this state that he had no lawful right or authority to deliver the said Peter Johnson, Edward Smith, and Isaac Gansey, to the executive of Virginia in compliance with the said requisition. The governor of Virginia is further respectfully

informed that the subject has now been reconsidered upon its merits, and also in connection with the position assumed by the executive of Virginia in regard to the requisition for the delivery of the fugitive demanded by the executive of this state, and that no sufficient reason is found for reversing the decision before made.

LETTER VI.

TO THE GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, April 6, 1841.

SIR: Your communication of the 22d of March last, enclosing a warrant for the surrender of Robert F. Curry, in compliance with my requisition is acknowledged. The proper agent has been directed to receive the fugitive and convey him to this state.

Your compliance with this requisition is made, in your communication, a ground for asking a reversal of my decision upon a similar process of your predecessor, demanding the surrender of Peter Johnson and others. Although the candor you have avowed is by no means questioned, it is a matter of some surprise that you have treated the cases as altogether analogous. If you could have shown that the indictment accompanying my requisition was informal and defective in charging the crime of forgery; if a competent judicial tribunal had decided that the indictment was thus defective, and that upon examination there was no probable cause to believe the fugitive guilty of an offence against any law of this state, and if forgery were not a crime or offence against the laws of Virginia, the common law and the laws of all civilized countries, then, although the cases would have been analogous, yet it would in my judgment, and with great deference, have followed rather that the demand made by me ought to have been denied, than that the requisition issued by your predecessor ought to have been granted.

Your views concerning the questions recently discussed be-

tween your predecessor and myself; your protest against supposed aggressions; and your appeal to me to review positions heretofore assumed, to abandon opinions and measures pronounced by you to be erroneous and untenable, and to restore harmonious relations between the states of New York and Virginia, have received most careful and respectful consideration. Since, however, you have intimated that it would be unprofitable to renew the discussion of the question referred to upon its merits my reply will necessarily be as general as your communication.

The lieutenant-governor of Virginia, in 1839, demanded of the executive of this state, Peter Johnson, Edward Smith, and Isaac Gansey, as fugitives, upon a vague and insufficient charge of their having stolen a negro-slave in that commonwealth. When this demand was made the constitution had existed during half a century, a period sufficient it may be supposed to have presented domestic exigencies of every character foreseen and intended to be provided for by the framers of that instrument. During that period the institution of slavery existed in Virginia and some other states, while in this and others it was abolished. Yet within that long time only one case is known to have occurred in which the executive of a slave-holding state demanded from a state in which slavery had ceased to exist the surrender of a fugitive upon a charge similar to that adopted by the lieutenant-governor of Virginia; and no case is known to have happened in which a demand of that character, made under such circumstances, was allowed. The affidavit was deemed by the executive insufficient and defective, even to charge a crime against the laws of Virginia, while the question involved, if the requisition had been supported by a proper charge, was regarded as one of grave importance, and requiring deliberate consideration. An informal note was delivered to the agent of Virginia, pointing out the defects in his papers and giving leave to amend, and a time was appointed for the consideration of the whole subject. In the meantime the supposed fugitives availed themselves of the legal remedy and were discharged on a writ of habeas corpus, on the grounds that the charge was insufficient, and that, upon examination, it was ascertained that the actual offence of the accused consisted in their having been seamen on board of a ship in which a slave had concealed himself, with a view to what proved an unsuccessful attempt to escape from servitude. The

lieutenant-governor, to whom the circumstances became known, nevertheless, demanded a decision upon the case as originally presented. That course presented to the executive of this state, on one hand, the alternative of seeming willing to evade a great constitutional question by placing his denial of the demand on the informal objection sustained by the judge, the removal of which would not dispose of the subject, and on the other, that of assuming the broad constitutional ground upon which, on mature reflection, he was satisfied the case must at last be decided. Both the frankness which becomes public functionaries, and a proper respect for the lieutenant-governor of Virginia, required the adoption of the latter alternative.

It was not unforeseen that an absolute, and probably irreconcilable, difference of opinion must arise between the lieutenant-governor and the executive of this state. It was obvious that the former would assume, in conformity with opinions known to prevail in Virginia, that men of a certain race and condition may be, and are, property and chattels, the subjects of purchase, sale, devise, and theft. The executive of this state, on the contrary, would have been faithless to the spirit of its constitution and laws, if he had not maintained that all men, of whatever race or condition, were men, and of right ought to be freemen; that every remedy for duress of a human being, whether it were the writ de homine replegiando, habeas corpus, action for enticement or false imprisonment, or indictment for kidnapping, regarded him as man, and not as property, and that it was as absurd in this state to speak of property in immortal beings, and consequently of stealing them, as it would be to discourse of a division of property in the common atmosphere. It was equally manifest that Virginia would insist that her sister-states should recognise the right of property of one class of her people in another, as established by her laws; that it would, on the contrary, become the duty of the executive of this state to hold, that, except so far as the principle would be controlled by the article of the constitution which declares that persons held to labor or service in one state by the laws thereof, and escaping into another, should, on demand and proof, be delivered up to the persons to whom such labor or service was due, the relation of master and slave was a peculiar local relation of the state where it existed, and that this state was not bound to recognise nor

protect it any manner, much less to protect it by extending for that purpose an article of the constitution which had no such design, nor any reference whatever to the relation.

The executive of this state, always careful to avoid even any seeming interference with the institutions or municipal affairs of other states, would have gladly avoided such a discussion, not from objections on his own part, but because he supposed the discussion, although invited by the lieutenant-governor, could not be agreeable to the people of Virginia. But it was the pleasure, nevertheless, of the lieutenant-governor of Virginia to demand an answer to the requisition, notwithstanding the decision would involve the great questions which have since been raised, and notwithstanding he must have known, moreover, that a compliance with the requisition would have been to surrender three men as criminals whom a competent tribunal had pronounced guiltless, and thus to exhibit the executive trampling on the judiciary as well as striking down the liberty of citizens of this state.

Such were the circumstances under which the executive of this state denied the requisition of the lieutenant-governor, and assumed the grounds on which that denial has been vindicated. The decision was not, as you have assumed, designed as an aggression upon Virginia, and intended to affect her institutions. Virginia was admitted, in the broadest sense, to be sovereign within her territory, in the enactment and execution of her laws. It was denied only that she could extend her legislative power so as to give a right to the executive of this state, or render it his duty to surrender its citizens to be transported to that commonwealth to be tried, condemned, and punished, for acts not in themselves wrongful, nor regarded as criminal by the laws of this state; and, inasmuch as differences might exist between the codes of the two states, it was conceded that in ascertaining the intent of the compact between them, reference might be made in such cases, not to the particular code of one or the other, but to the common law received by both, the laws of nations, and the laws of all civilized countries. These principles had no exclusive reference to the states in which slavery existed, but were the same by which other demands upon this state were tested, and they have been applied, not only in the case in question, but in others presented by Pennsylvania and New Hampshire, where

that institution has long since become obsolete. The discussion was, morever, conducted in a manner which it is hoped will be found to have been always courteous and respectful to Virginia.

The governor of Virginia, in submitting the correspondence to the general assembly, thought proper to distinguish the non-compliance of the executive of this state, upon the grounds assumed by him, as a flagrant invasion of the rights of that commonwealth, which, in the event of the failure of other remedies, might render it the solemn duty of Virginia to appeal from the cancelled obligations of the federal compact to original rights and the law of self-preservation. The executive of this state laid the same correspondence before the legislature, with the reluctant expression of his surprise and regret on account of the seeming menace of the governor of Virginia. The executive of this state, desiring to avoid increasing the embarrassment which had resulted in consequence of the course adopted by the authorities of Virginia, declared that he regarded the subject as one falling peculiarly within the province of the executive department, and in relation to which the duties of that department were prescribed by the constitution and laws of the United States, and not by the constitution or laws of this state, and he carefully abstained from invoking any legislative sanction of his decision. The executive of this state subsequently complied, promptly and cheerfully, with the request of the general assembly of Virginia, and submitted the appeal of that body from the executive to the legislature of this state, together with the able arguments of the governor of Virginia and of a committee of its house of delegates, all of which documents were laid before the legislature without comment. The executive also, with equal cheerfulness, complied with the further request of the general assembly of Virginia by reviewing the positions assumed by him, and, as he trusts, performed that duty in a spirit of candor and courtesy. The correspondence being thus again closed, the governor of that state submitted it to the general assembly in the manner he deemed proper. He at the same time offered large pecuniary rewards to induce individuals who might thus be tempted to seize, within the jurisdiction of New York and in violation of its laws, and convey to Virginia the three individuals, whose security was doubly assured to them, first by the decision of a competent legal tribunal, and then by the executive authority of the state. The

governor of Virginia also addressed public circular letters to such, and such only, of the American states as he assumed had peculiar sympathies with Virginia, inviting them to make common cause against New York. The executive of this state submitted these proceedings and the correspondence to the legislature of New York without remark. The general assembly of Virginia then thought proper to pass an act attempting to impose invidious restrictions and onerous impositions upon citizens of this state engaged in commerce with that commonwealth, citizens no otherwise responsible for the action of the government than as being among its constituents; and this was done with a purpose fully avowed to oblige the executive of this state to rescind a decision made under his constitutional responsibilities, and to compel the legislature of New York to repeal a law found on its statute-book, in accordance with its constitution and the constitution of the United States, and having no connection with the question in controversy. Simultaneously with this proceeding, the governor of Virginia refused compliance with a requisition, admitted to be in due form, for the surrender of a fugitive charged with the crime of forgery, unless the executive of this state would first rescind the decision previously made by him, allowing, however, to the executive of this state six months as a reasonable period to decide upon the extraordinary proposition thus submitted. The executive of this state lost no time in assuring the authorities of Virginia that the original subject had been reconsidered upon its merits, and also in connection with those injurious and retaliatory proceedings, and submitted the result, that the decision having been made in accordance with convictions of constitutional duty still entertained, he found no sufficient ground for a reversal of the same. It became the duty of the executive to communicate these proceedings of Virginia to the legislature of this state. In doing so, he could not but foresee that no one would think of repealing, and especially under such circumstances, a law of this state designed for the protection and security of its own citizens and others exposed to the risk of privation of liberty without even a charge of crime. There was no good reason to believe that the interests of the citizens of this state were less carefully regarded by its legislature, than the supposed interests of citizens of Virginia were by the general assembly of that commonwealth. There was no ground to suppose that

the principles in regard to personal liberty and state sovereignty maintained by the executive of this state, were less sedulously cherished by the legislature than the institution of slavery was by the general assembly of our sister-state. When the commercial position, condition, and relations of this state were considered, it was not unreasonable to suppose that the legislature, if it could transcend its constitutional barriers, might annoy, harass, and even oppress, unoffending citizens of Virginia, at least as severely as the general assembly of that commonwealth could oppress such citizens of New York. Nevertheless, the executive declared that he deemed any retaliatory action unworthy the dignity, and inconsistent with the relations of this state. He recommended no such measure. He declared that none should be adopted on his part; and assuming that the citizens of this state had ample constitutional remedies against any injuries they might suffer from the wrongful legislation of Virginia, he declared his confident conviction that it might safely be left to the magnanimity of that state and her own experience of the consequences of her measures to induce an abandonment of them and the performance of her constitutional obligations. The executive of this state has sincere pleasure in acknowledging, that, so far as one of the measures is concerned, this anticipation has been already realized.

From this cursory review, rather of what has been done than of what has been written, it will appear that the authorities of New York have not been the actors in any transaction tending toward a derangement of the relations between this state and Virginia. New York has done nothing, and has spoken only when and so often as she was appealed to by Virginia, and then always in the language of respect and affection. New York has made no novel nor questionable demands, complained of no wrongs, offered no rewards for violations of laws of Virginia, passed no vindictive acts, made no menaces, nor has she endeavored, in any manner, to excite her sister-states against Virginia, although she doubts not there are many and enlightened states among them which cherish her own principles and respect her decision.

I trust, therefore, sir, that you will be satisfied that the spirit of conciliation, kindness, and devotedness to the Union, which you have so properly invoked, will continue to prevail here, since

no other spirit has been indulged from the beginning. You have a guaranty also of the continuance of that spirit in the fact that, although not loud and frequent in profession, New York is constant in works showing her attachment to the Union. Her history presents no instance in which she has questioned its value, nor has she ever indulged speculations concerning that after state which sometimes engages the contemplation of those whose estimate of the value of the Union is not fully settled. You have a guaranty also in the perseverance with which New York pursues her policy of increasing her communications with her sister-states, and the determination she manifests to render equal justice to them all, while she protects her own citizens as she ought upon principles essential to her own sovereignty and that of her sister-states.

I trust, also, that you will agree with me that it rests with Virginia to restore harmony between herself and New York, if indeed that harmony has been impaired, which New York is not yet prepared to admit. New York maintains, with regard to Virginia, the same attitude and relations now as heretofore. She concedes to Virginia all she has ever yielded. She asks of her nothing which Virginia does not herself admit to be constitutional and just, and she maintains toward her the same attitude and relations that she maintains toward the other states of the confederacy. If, however, it be not the pleasure of Virginia to retain her ancient attitude, and cherish her ancient feelings toward New York, I can only express my unavailing regret for a circumstance so unhappy and so unfortunate.

You are pleased to remark that this state is pursuing a course calculated to render her territory an asylum for felons and runaway slaves. Waiving all exceptions to the spirit of this remark, I trust I may be permitted to reply, first, that it is not inconsistent with the most careful regard to the public morals to grant impunity to those declared innocent by the legal tribunals, or to those whose conviction would involve no offence against the laws necessary for the preservation of a well-ordered society, and no violation of abstract rights, as ascertained from the system of jurisprudence established in civilized nations; and secondly, that the experience of the people of this state has proved, at least to their own satisfaction, that neither public virtue nor public prosperity has received any injury from extending, so far as has yet

been done, equal justice to every class and every race of men within her limits.

Accept assurances of the high respect, with which I remain, your obedient servant.

THE HONORABLE JOHN M. PATTON,
Lieutenant and acting Governor of Virginia,
(or his successor in office.)

LETTER VII.

TO THE LIEUTENANT-GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, June 8, 1841.

SIR: The Honorable John M. Patton, your predecessor, announced to me, on the 22d of March last, that he had reversed the decision of the late governor of Virginia, refusing to comply with my requisition for the surrender of a fugitive from justice. He availed himself of the occasion, to appeal to me and to this state "to restore those harmonious relations between New York and Virginia, which it was alike the interest and the duty of all to endeavor to perpetuate." In replying to that communication, on the 6th of April last, I reviewed the event which had been supposed to affect the relations between New York and Virginia. Expressly declaring my determination to raise no controversy with our sister-state, and not even to protest against her injurious proceeding, but to leave their correction to her own magnanimity and her experience of their consequences, I contented myself with showing that New York had not been an aggressor; that she then maintained toward Virginia the same attitude and relations as heretofore, and the same assumed toward the other members of the American family; and that, consequently, it remained with Virginia to restore harmony between herself and New York, if indeed that harmony was impaired, which New York was not willing to admit. I have now the honor to acknowledge the receipt of your communication of the 3d of May last, reviewing the discussion which has taken place between your predecessors

and myself, giving me the first official information that has been received of the passage of a law of Virginia, establishing an inspection in her ports of vessels destined to ports in this state and owned or commanded by citizens or residents of this state, and concluding with a declaration that "it rests with New York to determine whether the friendly relations between the two states shall be interrupted, and whether the compact which binds together in peace and harmony the confederated states of our glorious and happy Union shall remain inviolate."

Virginia could not have forgotten that New York was, like herself, an independent state, and she must, therefore, have foreseen, when adopting a hostile law, that thenceforth the question which had been before discussed must become a subordinate one, and that its further consideration must be deferred, while that injurious act should remain in force. New York does indeed, for reasons equally consistent with her self-respect and evincive of her devotion to the Union, decline to complain; but it must be apparent that she is no longer a respondent. Such, indeed, would seem to be your own impression, since, in the absence of complaint on my part, you have entered at large upon a defence of the law in question.

It belongs more properly to the legislature than to this department, to consider the question you have thus raised. The subject was brought before that body two months before its adjournment, and your communication was in due time submitted. From the absolute silence of the legislature, it must be inferred that no expression on the subject was considered necessary. Concurring in the opinion thus inferred, I resume a correspondence which I had regarded as closed, solely because I am bound to believe that Virginia desires, as she has a right, to know the views which this state entertains concerning the measure in question.

The law of Virginia has the title, "An act to prevent the citizens of New York, from carrying slaves out of the commonwealth, and to prevent the escape of persons charged with the commission of any crime." Your letter substantially informs me that the title expresses the real objects of the enactment. New York can not admit that her citizens have manifested a disposition to bring away, even with their free consent, or to steal (since the terms are synonymous in Virginia) the slaves of their fellow-citizens of that commonwealth. No pretence of the kind has been made,

except in a single instance. The facts in that case, were these: A schooner, whether belonging to citizens of this state or otherwise does not appear, arrived at New York in 1839, from Norfolk. She was navigated by a captain, and three colored seamen; but whether any of them were citizens of New York, is not known, although it has, for argument's sake, been assumed. On entering the harbor of New York, a ship-carpenter, who had been employed on board at Norfolk, was found concealed in the hold. The carpenter was seized as a slave, and without legal process, carried back to Virginia. The captain was expressly exonerated of connivance in the escape of the fugitive, and the three colored seamen, were accused of connivance only upon the grounds of their connection with the vessel, and the fact that the fugitive, after his recapture, informed his pursuer, that one of the three seamen had told him he was foolish to remain in Virginia, as he could get good wages north, and that this suggestion induced him to run away and secrete himself. But it is not alleged that the ship-carpenter was known by the seamen to be a slave, or that they knew the fact of his concealment. Such is the evidence of a disposition on the part of the citizens of this state to carry away slaves, which has forced Virginia to adopt a further measure of self-protection, in addition to a statute which makes the transportation of a slave out of Virginia, without the consent of his master, a felony, and which, in violation of a fundamental principle of all law and natural justice, subjects even unconscious offenders to a brand of infamy, a fine of five hundred dollars, and four years' imprisonment.

The new statute applies only to vessels departing to a port in this state, and not to such as have any other destination, although it may be to a port where men may be held in slavery, and bought and sold as merchandise. Of what use to the citizen of New York is the Virginia slave? The moment the vessel reaches the open sea, he is no longer a slave. The law of nations extends its protecting arm over him, and will vindicate any injury to his person, or abridgment of his liberty. When he reaches the port, if he be not reclaimed by his former master, under a paramount law of the United States, he is as free as he by whom he was abstracted; and as against all the world but that master, he is a freeman; the acquisition of a year's residence and of a speck of earth worth two hundred and fifty dollars, ren-

ders him equal in political rights and privileges with any citizen of the state.

The historian, who in future times shall be turning over the pages of your venerated statute-book to find the act for "religious liberty," will pause with wonder at the page on which Virginia has impeached the citizens of her sister-state; nor can he omit, in passing judgment upon the libel, to notice that at the very moment it was written, New York was engaged in expunging from her code the only provision then remaining which tolerated human bondage.

Neither can it be admitted that this state gives impunity to criminals. Only a single requisition made by Virginia has ever been denied. That was the case in which it has pleased her to insist upon the surrender of the three colored seamen before mentioned, upon a charge so informal and defective, that they could not have been legally held to answer it even in the state of Virginia. It is true that the executive of New York, in declining a compliance with the defective process, informed the lieutenant-governor of Virginia, that even if the process had been in due form, yet, in his judgment, the case could not be brought within the provision of the constitution of the United States, because the act complained of was not a crime within the meaning of that instrument, which it was assumed did not apply to acts not regarded as criminal by the common law, or by the universal laws of civilized countries, or by the general sense of mankind. It has pleased Virginia to rest upon her defective case, and to raise an issue upon the abstract proposition thus advanced by the executive of New York, and from the maintenance of that proposition in regard to a single crime, in a case only possible, and that has never been presented, and which is so peculiar that it constitutes an exception to the jurisprudence of civilized nations, to infer a necessity for extraordinary measures to prevent the escape to New York of persons charged with *any* crime.

The law which Virginia has adopted contains a provision of virtual repeal to take effect whenever the legislature of New York shall repeal the act extending the trial by jury to fugitive slaves, and the executive shall surrender the three seamen. I regret that it has not been thought proper to inform me in what part of the fundamental law adopted by the people of the United States to "form a more perfect union," Virginia finds authority

for the exercise of legislative power to coerce the legislature and the executive of a sister-state. If the precedent thus furnished should receive general imitation, results, it is believed, would follow widely different from "perfect union," the sway of "justice," the prevalence of "domestic tranquillity," harmonious co-operation for the public defence, the promotion of the common "welfare," and the perpetuation of the blessings of liberty.

In stating the objections of Virginia to our law extending the right of trial by jury, you hold as a circumstance unhappily indicating the policy and feeling which prompted its enactment, that it was passed between the 11th of April, 1840, the day on which I had the honor to lay before the legislature a communication from his excellency Governor Gilmer concerning the requisition before mentioned, and the 14th of May in the same year, when the subject was finally disposed of by the house of assembly. I have much pleasure in informing you that the circumstance, which, through misapprehension, is thus insisted upon, was purely accidental. The principle involved in the law had been discussed for many years. The legislature, in 1840, received petitions for it as early as the 8th of January; the bill was introduced, and read a first and second time, on the 4th of February; and of three hundred and eighty-seven laws passed during the session, two hundred and eighty-five received their final consideration within the period you have marked.

You observe that the provisions of the law could not have been better adapted to render impossible the recapture of fugitive slaves, and consequently to entice them from their masters. Yet the only obstacle which the law raises in the master's way, is the jury, which the law declares shall be called when the party accused of being a slave claims title to himself. I had never expected to see the time when the excellence of that ordeal, and its peculiar adaptation to cases involving personal liberty, would be points in discussion between states having a common Anglo-Saxon origin. It must suffice for its defence, that the jury is one of our most venerated institutions; that it is regarded as the palladium of civil rights; and that it seems to this state to be both in harmony with the spirit of the age, and peculiarly proper to extend its protection to those who are exposed to a privation of liberty, not for wrongs committed by them, or for their failure to perform any duty, but because a great wrong was perpetrated against their ancestors.

You are pleased to assume, what can not be admitted, that the law is subversive of the plain intent and meaning of that section of the constitution of the United States, which declares that no person held to labor or service in one state, under the laws thereof, escaping into another state, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service may be due. The law, so far from subverting this provision, recognises and is based upon it.

It is objected, however, that the law conflicts with the act of Congress which authorizes the seizure and removal of a fugitive on the certificate of a federal judge or state magistrate, upon proof to his satisfaction that the person seized is the slave of the claimant. The objection assumes three propositions, neither of which can be admitted; first, that the certificate of a judge is a more reliable test of facts than the verdict of a jury; second, that the law undertakes to control judges and magistrates of the United States, which will be found, on examination, to be erroneous; and third, that this state has not the power of prescribing forms of proceeding to its own judges and magistrates, in regard to duties confided to them by the United States. The converse of this last proposition is maintained by this state, which holds that it can even enjoin its officers from assuming any jurisdiction under the authority of the federal government. It is, moreover, a sufficient answer to the objections urged by Virginia, that if the law does, in the least, conflict with the constitution of the United States it is void and must be declared so by the courts whose duties it assumes to prescribe.

In regard to the further purpose of the law of Virginia, to coerce a reversal of the decision made by the executive of this state, in the case of Peter Johnson and others, it might be sufficient to say that an answer has been already submitted, were it not for a new aspect in which the subject is now presented. You observe that Virginia might be satisfied without the surrender of the supposed fugitives, were it not for the principles avowed and the considerations urged as the grounds of the decision. It is then not so much a surrender of fugitives as a renunciation of principles, and under the peculiar circumstances of the case, of abstract principles, that Virginia demands. I must be permitted to say that such a claim is without precedent, and that the ab-

stract principles and opinions of the executive of a state or nation have never before been made a ground of complaint, retaliation, inspection, reprisal, war, or other form of conflict. Such a rule as Virginia attempts to establish would render diplomacy even less conducive to peace than immediate and open war. It would even bear hardly upon Virginia in the present case. Your predecessor, the honorable Mr. Hopkins, thought the laws of nations peculiarly applicable to the question which has been discussed between Virginia and this state. His excellency Governor Gilmer, adopting the opinion of a committee of the house of delegates, maintained that the question ought to be decided according to the common law. You contend that neither code has anything to do with the subject. It would be a peculiarly delicate position if Virginia were held to answer by the loss or interruption of her commerce for these conflicting but honest sentiments of her respected chief-magistrates.

It remains with Virginia to show not only that the obnoxious principles and opinions of the executive of New York are erroneous, but also that they are a proper cause of public offence; and still further, that Virginia has a right to prescribe principles and dictate opinions to the executive of a sister-state. For my own part, I freely confess that the difficulty of compliance with your requirements is not diminished by the distinction taken between the decision to which Virginia objects, and the reasons assigned for it. The renunciation of principles and opinions necessarily involves the adoption of opposite principles and opinions. I could not, to save the commerce of the state, or even the peace of the country, subscribe to the faith prescribed to me. I can not believe that a being of human substance, form, and image —endowed with the faculties, propensities, and passions common to our race, and having the same ultimate destiny, can, by the force of any human constitution or laws, be converted into a chattel or a thing, in which another being like himself can have property, depriving him of his free will, and of the power of cultivating his own mind and pursuing his own happiness; a property beginning with his birth, and reaching over and enslaving his posterity. I can not believe that that can be stolen which is not and can not be property; and although such principles may be adopted, and become the basis of institutions and laws in other countries, I can not believe that any such community has the

right to extend the operation of such institutions and laws so as to affect persons within the jurisdiction and under the protection of other nations. The provision in the constitution of the United States, directing that fugitives from labor or service, escaping from one state into another, shall be given up on demand to the person to whom such labor or service is due, whatever be its effect, is a limitation of the sovereign rights of the states. I can not believe that the provision can be extended beyond its letter and precise application, and so as to make the constitution fix a definition of crime at variance with the common law adopted by all the states, and with the jurisprudence of the civilized world. Opposed to such faith, I find the guarded language of the constitution, the principles of natural justice, the impulses of philanthropy, the instructions of religion, the sentiments of an enlightened age, the constitution of this state, which I am bound to maintain, and the spirit of the laws it is my duty to execute.

I should be wanting in candor, if I did not assure you that there is no reason to expect a compliance with either of the demands upon which Virginia insists. The tendency of opinion in this state has a different direction, and the extraordinary proceedings which Virginia has adopted have been by no means calculated to check its progress.

If then I am asked, what will be done by New York, I answer as before, that nothing will be done. Her citizens, if oppressed by Virginia, will resort to their legal remedies. This state will neither exercise her legislative power to counteract the injurious measures of Virginia, nor call her to answer before her sister-states. Relying upon the justice of her cause, New York will await the returning magnanimity of Virginia, without even demanding an explanation. She gives a pledge of peace and fidelity to the Union in submitting to injury, and Virginia shall be indulged in complaining without cause. If all this will not satisfy Virginia, and if the harmony of the Union must be disturbed, New York will still adhere to that Union with persevering fidelity, and with unchanging affection even toward those who shall attempt to overthrow the sacred compact.

I have the honor to be, with very high respect, your obedient servant.

THE HONORABLE JOHN RUTHERFOORD,
Lieutenant and Acting Governor of Virginia.

LETTER VIII.

TO THE LIEUTENANT-GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, October 8, 1841.

SIR: In your letter of the 3d of May last, after reviewing at some length a discussion which had previously engaged your predecessors and myself, you informed me that the general assembly of Virginia had, on the 13th of March last, passed an act entitled "An act to prevent the citizens of New York from carrying slaves out of the commonwealth of Virginia, and to prevent the escape of persons charged with any crime." You observed, also, that the general assembly of Virginia, being very solicitous to maintain friendly relations between that commonwealth and New York, had taken care that the law should not go into effect until the 1st of May, 1842; and had authorized the governor to suspend it, by his proclamation, whenever he should be officially informed that the causes had ceased which required the enactment. You defined those causes to be, the passage of a law of this state extending the trial by jury, and the refusal of the executive of New York to surrender three supposed fugitives from justice. You showed, also, that the general assembly required the state of New York to remove those causes, by repealing the obnoxious law, and surrendering the alleged offenders. In my reply, I observed that Virginia could not have forgotten, that, like herself, New York was an independent state; that our sister-state must therefore have foreseen, when adopting a hostile law, that thenceforth the original question must be a subordinate one, and that its further discussion must be deferred so long as that injurious act should remain in force; and that although New York, for reasons equally consistent with her self-respect and evincive of her devotion to the Union, would forbear to complain; yet it must be apparent that she could no longer consent to be a respondent.

Having now the honor of acknowledging the receipt of your letter of the 24th of July last, I find that you have been pleased to express therein an opinion that there was some inconsistency in my taking the ground thus assumed, after having neglected to do so when writing my letter to your predecessor, the Honorable John M. Patton. The law of Virginia was passed on the 13th of March. Its enactments were specially, and even exclusively, directed against citizens and inhabitants of New York. It was understood that the object of the act was to constrain, or if you please, to induce, New York to comply with certain demands, or, if you prefer the expression, certain wishes, of Virginia. The act allowed to New York a season for reconsideration, and specified a form in which atonement could at any time be rendered acceptable. Unacquainted with the courtesies customarily practised by states when adopting incipient measures of retaliation, I permitted myself to expect official information of so extraordinary a measure — an error into which it was more natural I should fall, because the parties in the proceeding were members of one family, and Virginia had, during a long correspondence, constantly given assurances of her eminent satisfaction with that relationship, and her earnest desire that it might be harmonious and enduring. No such official information was received, although the executive of New York was honored by the chief-magistrate of her sister-state with communications relating to kindred subjects, and bearing dates three days, and nine days, after the law had passed. The imperfect and unreliable information which the public newspapers of the city of New York conveyed to me was, after a lapse of several days, submitted to the legislature; but I thought proper to delay making any communication on the subject to the state of Virginia, until authentic, if not official information concerning the law should arrive. Your letter of the 3d of May furnished the information which has been recited; and this was the only direct or authentic information received, previously to the date of the communication I had the honor to address to you. In your letter now before me, you disavow having had any intention, when writing your first communication, of giving me the official information which I extracted from it. It would seem, therefore, if I have erred in selecting the moment for announcing to the executive of Virginia that the original question had become subordinate, that the fault I have

committed consists in having made that communication prematurely, instead of having delayed it so long as to afford to Virginia just cause of complaint. If, however, you shall still be of opinion that there has been culpable procrastination, I trust it may be excused, if not upon the ground that prudence counselled delay, at least upon the consideration that it was required by respect for the state you represent.

The law of Virginia declares that no vessel owned, commanded, or navigated, in whole or in part, by any citizen or resident of this state, or by any other person than a citizen or inhabitant of Virginia, and bound to any port in New York, shall depart from Virginia until she shall have been inspected by an officer of that commonwealth to ascertain that no slave, no person held to labor or service, and no person charged with crime in Virginia, shall be concealed on board. The act imposes a fine of five hundred dollars for leaving a port without a certificate of such inspection, and requires a bond from each captain or owner in the penalty of one thousand dollars, with inhabitants of Virginia as sureties, and a condition to pay five hundred dollars for any such fugitive from justice, and the value of any slave found on board of the vessel. The act directs that the fees of inspection, together with other costs and expenses, shall be charged upon the vessel; and provides that in any prosecution arising out of the law, it shall be presumed that the party accused is a citizen or resident of New York, until he shall affirmatively prove his title to the immunities and privileges of a citizen of that commonwealth.

It is much regretted that you have not thought it important to advert to some doubts concerning the constitutionality of the law, which were suggested in my last letter. The constitution of the United States secures to Congress the power of regulating not only foreign trade, but commerce between the states, and guaranties to the citizens of each state all the privileges and immunities of citizens of the several states. The law of Virginia seems to me to be an attempt to regulate commerce between New York and a sister-commonwealth, and to deprive citizens of this state, and of other states, of immunities and privileges conferred upon citizens of Virginia. The law avows a design to oblige the constituted authorities of New York to acquiesce in such a construction of the constitution and laws of the United

States as Virginia prescribes, and to conform the legislation and the executive action of this state to that construction. It need hardly be observed, that if Virginia can make discriminating commercial regulations for such a purpose, New York and any other state may exercise like powers for similar purposes. If such were indeed the case, the establishment of the constitution, instead of securing that "more perfect union" contemplated by its founders, would produce disorder, and end in anarchy.

I will not advert to the many peculiar reasons why this state can not acquiesce in any unconstitutional assault upon her commerce by a sister-state, nor further dwell upon the aggressive character of the measures Virginia has seen fit to adopt, than to remind you that whenever a foreign state has unlawfully claimed the right to search American vessels, New York has been at least as firm as her sister-states in resisting so odious an assumption. And although she is not, in this case, at liberty to retaliate, because the pretension is set up by a sister-state, yet New York will never be able to discover that that pretension ought to be allowed.

At the present state of the proceedings between the states, it will not be expected that I should reply at length to such parts of your letter as relate to other topics than the law of Virginia. It might be conceded that Virginia has manifested unvarying forbearance; although she has constantly insisted upon demands which this state regarded as unconstitutional; has, one day, refused to comply with a request admitted to be just and legal, and, on another, claimed especial consideration for revoking that refusal, has adopted measures which seem calculated to harass the commerce and annoy the citizens of this state, and has appealed to other states in a manner which tended to stir up contention in the family of states; yet it must be obvious that even then, inasmuch as the parties are equal, if a reconciliation is to be accomplished, Virginia ought to make the first advance. Even if it were conceded that the recorder of the city of New York has erred in his adjudication upon the case of Edward Johnson and others; and were it granted that to permit, or to persuade, a person held in slavery to escape and to aid him in regaining his liberty, was not only as criminal as larceny, but was in fact synonymous with it; and were it further yielded that while the people of New York refused toleration to any form of human slavery, and maintained a sound, efficient, and equal

administration of justice, they were rightly accused of a disposition to steal the slaves of the citizens of Virginia, and offering impunity to criminals of every grade; and were it conceded that a being of human substance, form, and image, endowed with faculties, propensities, and passions, common to our race, and having the same ultimate destiny, could, by the force of any human constitution of laws, be converted into a chattel, or a thing, in which another being like himself could have property; and if to all these concessions it was added that a law of this state which in no way interfered with the right of a master, under the constitution and laws of the United States, to institute proceedings in the federal courts and before federal magistrates, to recover a fugitive from service, nor with the proceedings of such tribunals in hearing, examining, and deciding upon, such claims, was unconstitutional; yet after all these concessions, were made, none of which, however, can in any sense be granted, it would still remain to be shown that Virginia has a right to pass an unconstitutional law affecting citizens of New York, because New York had enacted a law alleged to be injurious to her sister-state. It might even be admitted, as you have erroneously supposed, that the privilege of trial by jury had not been allowed in courts in this state to fugitives from service from other states, until Virginia had renewed her demand for the surrender of certain fugitives from justice, when in truth the right of trial by jury had always been enjoyed in such cases in this state, and the law to which Virginia objects was only declaratory of that right, and amendatory of the form used on such occasions; and yet it is not perceived that this concession could, in any manner, impair the just objections of this state to the extraordinary measures which Virginia has adopted.

After every one of your respected predecessors protested against the opinions necessarily expressed by me, in a discussion commenced and insisted upon by Virginia, and now after you have substantially informed me that Virginia insisted upon an abandonment of those opinions more than a surrender of the fugitives, I confess it seems somewhat extraordinary that the plain exposition and renewed declaration of those opinions, contained in my former letter, should be pronounced gratuitous.

The august Congress of statesmen who laid the foundation of the constitution, most emphatically declared that all men were

born free and equal and had inalienable rights, inconsistent with every form of slavery. A citizen of Virginia, who was not only the most renowned of the patriots who engaged in the establishment of the constitution, but who is, by the general consent of mankind, acknowledged to have exhibited the most perfect character our nature has ever reached, manumitted all his slaves as an act of conscientious duty. Another, who was second only to Washington in the great number of statesmen that Virginia has given to our country, pleaded the prejudices of birth, education, and association, as an apology for the opinions entertained by his fellow-citizens, that human beings might be the subjects of property, as much as their horses and cattle. When I recall these circumstances, I must be allowed to indulge a belief that I have not so far fallen from the faith of the founders of the constitution as you have been pleased to suppose.

I pray you to accept renewed assurances of my very high respect, and of my earnest concurrence in the desire you so properly express for a speedy adjustment of the differences which it has been our duty to discuss.

I have the honor to be, very respectfully, your obedient servant.

THE HONORABLE JOHN RUTHERFOORD,
Lieutenant and Acting Governor of Virginia.

LETTER IX.

TO THE LIEUTENANT-GOVERNOR OF VIRGINIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, November 8, 1841.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th of October last, giving me notice that the general assembly of Virginia, on the 13th of March last, passed an act entitled "An act to prevent the citizens of New York from carrying slaves out of this commonwealth, and to prevent the escape of persons charged with any crime." The communication is accompanied by a copy of that law, and a report made by a select committee of the house of delegates of the general assembly. I pray you to be satisfied of my belief that the delay of the official notice thus given me, was altogether accidental, and did not arise from any intentional disrespect to the state of New York.

The act contains a provision of postponement until the first day of May next; and a further provision, authorizing the governor to suspend its operation, whenever officially informed that the legislature of New York has repealed a law passed on the 16th of May, 1840, entitled "An act to extend the trial by jury," and that the executive of New York has, in *good faith*, consented to comply with the demand of the executive authority of the state of Virginia, for the surrender of Peter Johnson, Edward Smith, and Isaac Gansey, as fugitives from justice.

The tenor of the letters I have had occasion to address to you, and to your respected predecessors, renders it unnecessary for me, at this time, to say more in regard to the requisition upon which Virginia insists, than to inform you that my convictions concerning the unconstitutionality of the requisition, remain unchanged. It of course belongs to the legislature to decide, not only whether the law, against which Virginia objects, ought to be repealed, but also, whether such a repeal, if otherwise proper, could be made in the peculiar circumstances now existing, consistently with a due regard to the dignity and honor of the state.

Your communication, with the papers accompanying it, will, therefore, be submitted to the legislature.

Cheerfully deferring to your opinion, that the long correspondence which has taken place between the executive authorities of Virginia and New York may now be brought to a close, without detriment to the public welfare, I shall only notice one of the topics upon which you have been pleased to dwell.

I have deemed it my duty to observe, that under the extraordinary circumstances of the case, and inasmuch as the parties were equal, if a reconciliation were to be effected, it appeared to me that the first advance ought to be made by Virginia. Dissenting from the opinion thus expressed, you ask, after referring to the history of the controversy, "In this state of things, when New York has neither complied with the demands of Virginia, nor offered any redress for the wrongs of which she complains, what sort of advance can she possibly make? Is it expected by your excellency, that she should relinquish her demands, repeal her defensive law, leave her wrongs unredressed, and her rights unprotected!"

You will do me the justice to admit, that from the beginning of this controversy until now, I have been content that this state retained and should continue to retain unvaryingly a pacific attitude toward Virginia, and have cheerfully left the authorities of Virginia to decide upon the relations which that commonwealth should hold toward her sister-state. The proceedings were commenced by Virginia, with a demand, to which I could not accede. I have fully explained, that the law of New York, complained of by Virginia, was passed without any reference whatever to that commonwealth, and without any design to affect its citizens, and that it did not affect any right secured to Virginia or her citizens, by the constitution and laws of the United States. When the executive of Virginia retaliated upon this state, by refusing to deliver a fugitive from justice, in a case of acknowledged obligation, I declared that this state would wait the pleasure of Virginia to recede from the position she had thus assumed. When Virginia appealed to the other members of the American family to espouse her controversy, and make common cause against New York, this state, unwilling to be active in disturbing the general harmony, and confiding in the justice of her sister-states, neither remonstrated with Virginia, nor defended herself against accusations deemed ungenerous and unjust. I must now

add, that since Virginia has been the first and only state, which, since the federation, has, by aggressive legislation, assailed the constitutional sovereignty of this state, New York neither entertains a thought of retaliating such unkindness, nor does she remonstrate, nor even complain. In the same spirit that has continually governed her proceedings, she must decline to suggest to Virginia a form of advance toward that reconciliation, for which this state, unconscious of having committed wrong, or having indulged a sense of injury, is ready, when it shall please Virginia to meet on the basis of equal constitutional rights. Even if Virginia make no advance, this state will be content to leave her citizens to their individual remedies, and will cheerfully wait until the supreme court, the arbiter between the members of the confederacy, shall have had occasion to decide upon the constitutionality of both laws, or until Virginia shall see fit to remove the obstacle she has interposed to an adjustment by the states themselves, of the misunderstanding which both have so much reason to deplore. I do not suggest that Virginia shall relinquish her demands, or repeal what she describes as her defensive law, or that she shall leave her supposed wrongs unredressed, or her supposed rights unprotected. I only insist, that while Virginia maintains an aggressive posture, she can not reasonably expect the menaced state to manifest an acquiescence in a proceeding so incongruous with what she deems the relations of the states, as most assuredly she would do, did she consent to discuss, under such circumstances, the original subject of controversy. I trust I may be permitted to add, with perfect deference, that if Virginia had not passed the injurious law which now excludes debate on the original question, she would still have remained in the enjoyment of all the rights, and all the means of redressing wrongs which this state, and every other state, possessed, and all which, in the judgment of New York, the constitution of the United States allows to any state.

I can not retire from this correspondence without making an acknowledgment of the distinguished candor and courtesy with which it has been conducted on your part, and expressing renewed assurances of the very high respect and consideration with which I have the honor to remain, your most obedient servant

THE HONORABLE JOHN RUTHERFOORD,
Lieutenant and Acting Governor of Virginia.

THE GEORGIA CONTROVERSY.

LETTER I.

TO THE GOVERNOR OF GEORGIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, June 15, 1841.

SIR: A requisition issued by your excellency on the 29th of April last, for the surrender of John Greenman as a fugitive from justice, was delivered to me on the 12th instant. The requisition states, that Greenman, who is alleged to have fled to this state, is charged with having committed larceny in two instances, and it is accompanied by affidavits, of which copies are as follows:—

"*State of Georgia, Chatham County.*

"Before me, Robert Raiford, a justice of the peace in and for said county, personally appeared Robert Willis Flournoy, who being duly sworn, deposeth and saith, that one John Greenman, on the thirteenth day of April, in the year of our Lord eighteen hundred and forty-one, at the plantation of this deponent, in the county of Chatham aforesaid, did feloniously steal, take, and carry away, three blankets, two shawls, three frocks, one pair of ear-rings, and two finger-rings, all of the value of fifty dollars, of the goods and chattels of this deponent, contrary to the laws of this state; and deponent further saith that the said John Greenman hath fled from justice, and gone to the state of New York. "ROBERT WILLIS FLOURNOY.

"Sworn to and subscribed before me, this 24th April, 1841.

"ROBERT RAIFORD, *J. P.*"

"*State of Georgia, Chatham County.*

"Before me, Robert Raiford, a justice of the peace for said county, personally appeared Robert Willis Flournoy, who being duly sworn, deposeth and saith, that on the thirteenth day of April instant, at the plantation of this deponent, in the county and state aforesaid, one John Greenman, did feloniously steal, take, and carry away a negro woman-slave, named Kezia, the property of this deponent of the value of five hundred dollars, contrary to the laws of said state; and deponent further saith, that the said John Greenman hath fled from the said state to the state of New York.

"ROBERT WILLIS FLOURNOY.

"Sworn to and subscribed before me, this 24th April, 1841.

"ROBERT RAIFORD, *J. P.*"

I regret that I am obliged to regard both the affidavits as defective, and altogether unsatisfactory. The constitution provides that a fugitive charged with treason, felony, or other crime, shall be surrendered upon demand, and obviously implies that the charge must be legal in form and substance. This view is corroborated by the act of Congress, which directs that the executive authority making the demand, of a fugitive from justice, shall produce a copy of an indictment, or an affidavit, charging the accused with having committed treason, felony, or other crime. The object of this provision is to enable the executive, upon whom the demand is made, to determine whether there is probable cause for believing that a crime has been committed. The affidavit, therefore, when that form of evidence is adopted, must be at least so explicit and certain, that if it were laid before a magistrate, it would justify him in committing the accused to answer the charge. If the affidavit be not thus explicit and certain, it is not a legal compliance with the act of Congress. The affidavits before me are defective, in not showing so much of the nature and circumstances of the transactions alleged against the accused as would enable me to determine whether the taking and carrying away of the person and property mentioned, were felonious. The only evidence upon that point, is found in the oaths of Mr. Flournoy, that the accused feloniously stole, took, and carried away, the person and property mentioned, in violation of the laws of Georgia. Persons and property may be taken and carried away under such circumstances that the transactions would not constitute stealing nor be felonious. The question of taking and carrying away a person or property is a question of fact for the complainant to substantiate by his oath. The question in such a case, whether the taking and carrying away, when proved, constituted a larceny and were felonious, would be a question of law, to be ascertained by the magistrate from the facts proven, and not from the opinions of the complainant. There being no statement of facts and circumstances in the affidavits, they can be regarded only as showing that it was the complainant's opinion that the taking and carrying away of the slave and property mentioned, were felonious and in violation of law. The affidavits do not disclose the ground upon which that opinion was formed, so as to enable me to decide upon the correctness of the opinion thus given. The opinion may be errone-

ous, and in that event, there would be no remedy against the complainant, because he could be convicted of perjury only for making a false statement of facts, but never for conclusions erroneous in law. The magistrate who should receive such an affidavit would devolve upon the complainant, who is generally an aggrieved party, the judicial responsibility which the laws cast upon the magistrate himself. It is not enough to say that the magistrate taking the affidavit, or even the executive who issues a requisition upon it, is satisfied with the charge contained in the affidavit. If no discretion to pass upon its sufficiency was intended to be conferred upon the executive on whom the requisition should be made, the submission of the affidavits to him would be an idle ceremony, and the provision of law directing it unmeaning and useless.

Testing the affidavits before me by well-established rules of law, I am satisfied that they are not sufficient to justify the issuing of a warrant for the arrest of the fugitive. Desirous, however, of ascertaining from the facts of the case, whether it might not be proper to adopt some measures for securing the offender, or preventing his escape from punishment, by reason of a defective charge, I have heard the statement of the agent charged with the requisition, concerning the facts and circumstances of the case. I have learned from him, that the accused was a transient person, a seaman, who spent some months in the vicinity of Mr. Flournoy's plantation, distant about seven miles from Savannah; that he engaged a passage to New York in the ship Wilson Fuller; that when the vessel was about to sail, it was discovered that the slave had absconded from her master, and that pursuit being made, she was found concealed on board the ship, under the care of the accused, and was recaptured and restored to her master. There is reason to believe she was persuaded to seek her freedom by the accused, who represented to her, that if she would go to the north with him, she could live there in the enjoyment of all the privileges of freedom. The agent further states, that the accused in no other manner took the clothing and ornaments of the fugitive girl and carried away, than by enticing her to escape and aiding her in the accomplishment of that purpose.

If the facts are as thus stated, there can be but one opinion of the transaction, in a moral view. It can not be supposed that the accused had any good or proper motive for thus practising upon

the slave's natural desire for liberty, and seducing her from her master. Whatever might have been his motive, his success would have almost certainly resulted in abandoning her to poverty and vice. Such depravity can neither be defended nor extenuated, but, on the contrary, deserves severe punishment. Nevertheless, your excellency will perceive that the proceedings which have been instituted are by no means in a form adapted to the case, so as to justify me in arresting the fugitive. Instead of his having committed larceny in two instances, as your excellency has, undoubtedly through misapprehension, been led to suppose, the acts complained of constitute one and the same transaction, which is not divisible into two crimes. Again, if the facts be as thus stated, your excellency will perceive, that the goods mentioned, instead of having been feloniously stolen, taken, and carried away by the accused, as would be inferred from the very defective depositions of Mr. Flournoy, were the apparel and ornaments of the slave, and were chiefly worn upon her person in her attempt to escape from servitude, and that the accused did not in fact take or carry away the articles in question; but, on the contrary, they never came into his possession, nor did he manifest an intention to deprive the slave of them or to convert them to his own use, without which possession and intent, he could not be legally charged with larceny.

It may, perhaps, be unknown to your excellency, that while the kidnapping of a person by fraud or violence, or his abduction against his will, or any unlawful seizure of him, or abridgment of his liberty, is regarded in this state as a high crime, it is held that the relation of master and slave in other states, does not constitute a property in the person of the slave, so as to render the slave a subject of theft from the master. But without, at this time, making this position a point in the case, it is obvious, if the transaction be correctly stated by your excellency's agent, that there was in fact no taking or carrying away of the slave, but on the contrary, that she voluntarily left her master, and walked, of her own free will, to the ship. It is true that this was done under the protection of the accused, and in consequence of his persuasion; but in thus persuading and aiding her, he asserted no pretence of property in the slave, nor did he exercise any power or assume any control over her. Reprehensible as his conduct is admitted to be, your excellency will perceive, that never-

theless, it can not be regarded as an act of larceny, since larceny is defined in law to be the unlawful taking by one person of another's goods, with an intent to convert them to his own use.

The information obtained from the agent may be incorrect. I am far from declaring it authentic, and my decision upon the requisition rests on the insufficiency of the case presented by the affidavits. Nevertheless, I have thought it my duty to lay the information before your excellency, since I can not suppose that, however desirous to bring the fugitive to justice for his real offence, your excellency would adopt the charge of stealing the slave, when she was not in fact taken or carried away, but, being of full age, left her home of her own free will. Nor can I for a moment believe that your excellency, apprehensive that, under the circumstances, the accused could not be lawfully surrendered upon the charge of stealing the slave, would desire the indirect accomplishment of that object by means of a constructive charge that the accused had stolen the clothing and trinkets which the slave wore in her flight.

Regretting that an occasion has occurred in which I am obliged, for want of accurate and legal evidence, to decline a compliance with a requisition made by your excellency, I beg leave to assure you that I shall very cheerfully receive such further statement of the facts, bearing upon the case, as you may be pleased to submit. I have the honor to be, very respectfully, your obedient servant.

His Excellency Charles J. M'Donald,
Governor of Georgia.

LETTER II.

TO THE GOVERNOR OF GEORGIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, July 14, 1841.

SIR: Your communication of the 28th of June, relating to the requisition for the surrender of John Greenman, has been received.

The affidavits annexed to the requisition seek to charge Greenman with having committed larceny in two instances. In the first affidavit, Mr. Flournoy, the complainant states, that the said Greenman, "on the 13th of April, 1841, at the plantation of the deponent, in the county of Chatham, did feloniously steal, take, and carry away three blankets, two shawls, three frocks, one pair of ear-rings, and two finger-rings, all of the value of fifty dollars, of the goods and chattels of the deponent, contrary to the laws of the state." The other affidavit sets forth that Greenman "did feloniously steal, take, and carry away, a negro woman-slave, named Kezia, the property of the deponent, of the value of five hundred dollars, contrary to the laws of said state."

In my former communication I expressed an opinion that these affidavits were defective and insufficient in substance, because the complainant swore in each case to a legal conclusion, that the accused had committed a larceny, and not to facts and circumstances necessary to show that the taking and carrying away of the property and person described were felonious. I explained, by stating that the question whether a person or property had actually been taken and carried away was a question of fact to be proved by the oath of the complainant, while the inquiry whether such taking and carrying away were felonious, was a question of law to be ascertained upon an examination of the facts and circumstances proved. I remarked that the declaration of Mr. Flournoy, that the taking and carrying away were felonious was,

in judgment of law, nothing more than the expression of his opinion that the transaction was felonious. I attempted to elucidate this view by showing that a complainant could be convicted of perjury only for a false statement of facts, but never for erroneous opinions or inferences of law; and that if it should hereafter appear that although Greenman did actually take and carry away the person and property mentioned, yet that the taking and carrying away were lawful and not felonious, Mr. Flournoy could not be convicted of perjury, or held in any manner responsible. I will now beg leave to add another explanation. The word "feloniously," and the words "in violation of the laws of Georgia," in the affidavits are of no force or effect, because they express only Mr. Flournoy's opinion, that the acts complained of were felonious and in violation of law, which opinion could have no legal weight against the accused in any judicial forum. The affidavits then are to be read as if those words were not found therein. The charges contained in the affidavits would then be that the defendant took and carried away the person and property mentioned, and would be defective and insufficient, because for aught that appears, the taking and carrying away might have been lawful.

I remarked in my former communication that the magistrate who should receive such an affidavit as those submitted in the present case, would thereby devolve upon the complainant the judicial responsibility which the law cast upon the magistrate himself. In the letter before me you maintain that the affidavits are sufficient. You observe that if the affidavits are sufficient in form and substance to require a magistrate in Georgia to issue a warrant for the apprehension of Greenman there, they are all that can be necessary to demand his arrest in another state. While I might not be willing to admit this position without some modification, its discussion seems not to be quite unnecessary. I apprehend there is no difference between those rules of law bearing upon the question of the sufficiency of the affidavits which prevail in the state of Georgia, and those which prevail in the state of New York. I infer your agreement in this opinion from your remark, that by the laws of all the states, including New York, it would be found that on affidavits much less positive than those against Greenman, charging a suspicion only of crime, without a detail of facts and circumstances, warrants are issued and citizens

are arrested and put upon trial. Your excellency will pardon me for observing that positiveness of assertion is not all that is necessary to make a charge legal and valid. A reasonable suspicion resulting from a detail of the facts and circumstances is all that is necessary, while the most positive assertion of guilt without such a representation of the facts and circumstances as will show that they are within the personal knowledge of the complainant, and that they sustain the charge of crime is, for reasons which it can not be necessary to recapitulate, unsatisfactory and insufficient.

Blackstone in his Commentaries 4, 290, quoting Sir Matthew Hale's Pleas of the Crown, 110, says, "1. A justice hath power to issue a warrant to apprehend a person *accused* of felony though not yet indicted. 2. That he may also issue a warrant to apprehend a person *suspected* of felony, though the original suspicion be not in himself but in the party that prays the warrant, because he is a competent judge of the probability offered to him of such suspicion. But in both cases it is fitting to examine, upon oath, the party requiring a warrant as well as to ascertain that there *is* a felony or other crime actually committed, without which no warrant should be granted, as also to *prove* the cause and probability of suspecting the party against whom the warrant is prayed." To this remark, Chitty adds the following note: "The magistrate should not grant the warrant without such probable cause as might induce a discreet and impartial man to suspect the party to be guilty (Hawkins, book 2, ch. 13, sec. 18). And if a magistrate should grant a warrant without an oath of circumstances affording a reasonable suspicion of the guilt, and the party prove innocent, he will be liable to an action of trespass at the suit of the party aggrieved. (2 Term. Rep. 225. 2 Wilson, 150. 2. Hawkins, ch. 13, sec. 18)." It is laid down in 1 Hale's Pleas of the Crown 110, 111, that "it is fit in all cases of warrants for arresting for felony, much more for suspicion of felony, to examine upon oath the party requiring the warrant, as well whether a felony was done, as also the causes of his suspicion, which examination should be put in writing, for the justice is in this case a competent judge of those circumstances that may induce the granting of a warrant to arrest." The principles applicable to this subject have been well summed up in a recent treatise upon criminal law by Barbour, page 455. He says "The justice in

deciding on granting a warrant should not regard mere *allegations* of suspicion, but the *grounds* of suspicion. The *facts* and *circumstances* must be laid before him, and these should be sufficient to make it appear that a crime has actually been committed, and that there is probable cause for charging the person complained of therewith." He cites 1 Chitty's Criminal Law, 33, who says, "and it is the duty of the magistrate well to consider all the circumstances sworn to, and not to grant any warrant groundlessly." In the supreme court of New York in the case of Smith *vs.* Luce, 14 Wendell, 238, a case under the act to abolish imprisonment for debt, it was held that "the justice must be satisfied of the fraudulent intent from facts and circumstances, not from the belief of any one. Facts must be shown to the justice which shall leave no reasonable doubt on his mind that the defendant has committed, or is about to commit the fraudulent acts mentioned in the statute."

These general principles, derived not from the enactments of the legislature in any of the states, but from the common law received in all the states, furnish the test to which the affidavits of Mr. Flournoy have been subjected. I can not but hope that, upon a reconsideration of the subject, you will agree with me that the affidavits were not sufficient to authorize a justice to issue a warrant, and will allow me to insist that they are altogether insufficient to justify me in directing the arrest of the accused.

You observe that you can not admit the principle that the executive of a state, on whom a demand is made, may organize himself into a court and hear accusatory and defensive testimony to ascertain whether there are circumstances manifesting a felonious intent on the one hand, and the absence of it on the other. If it were necessary, on the present occasion, to enter into a controversy concerning the powers vested in the executive authorities of the states in deciding upon requisitions for the surrender of fugitives, I might maintain that the executive of a state can not be obliged, by any law of Congress, to arrest a person and deliver him over to the authorities of another state upon an accusation for which he should ascertain that there was no probable cause. But your excellency does not deny me the right to demand such evidence, as a justice of the peace in Georgia would be bound to require before issuing a warrant, and that is

ample for this occasion. Conceding therefore, for argument's sake, that I am not authorized to inquire into the merits of the charge, I shall be content to insist upon my right to decide upon its sufficiency.

Your excellency supposes that my objections to the affidavits are met by saying that I would be bound to receive a copy of an indictment found against the accused, and yet that an indictment does not state the facts and circumstances of a crime with more particularity than the affidavits you have submitted. It would be a sufficient answer to this argument, that you have submitted affidavits, and not indictments. I may nevertheless remind your excellency that there is a wide difference between an affidavit charging crimes and an indictment. The former is a hurried proceeding. It is the act of a single individual, a voluntary accuser. He may be ignorant, prejudiced, malicious, corrupt, and even depraved. Often, if not always, he is an aggrieved accuser. There are manifest reasons, then, for scrutinizing his complaint. An indictment, on the contrary, is the solemn verdict of a grand jury, selected upon the grounds of their intelligence and virtue, sworn and charged diligently to inquire and true presentment make upon evidence, and with comprehensive powers to collect testimony, and a right to have legal advice in making deductions of law. The grand jury is a regularly-constituted tribunal. A majority must hear a complaint. A majority must pronounce an indictment to be a true bill, and their verdict must be rendered in open court. The indictment, as preferred by the prosecuting officer, may be regarded as a charge submitted by him to the grand jury, and it is not until they have inquired, upon oath, into all the facts and circumstances of the case proven to them by competent witnesses, that they can affirm the charge and give it force and effect. Reserving the question whether, if this case had been presented by indictment, it would not be within my power to inquire into the facts and circumstances, and ascertain whether the indictment was not without probable cause, or did not charge an offence not within the purview of the constitution, I trust that I have sufficiently shown that your argument, from the analogy between an indictment and affidavits, has not invalidated the positions upon which my denial of your requisition rests.

You remark that the guilt of an accused person often depends

upon circumstantial evidence, and that the testimony of a single witness, disconnected from the rest in such cases, may establish no fact warranting an inference unfavorable to the accused; and you inquire "how then could an affidavit, except one alleging information and belief which might be discarded as insufficient by a mind over-scrupulous of the rights of felons, accompany a demand of a fugitive, under a pretext that it charged a crime?" I need only answer, that to warrant a demand for the surrender of any citizen from the executive authority of the state where he is found, the affidavit, when that form is used, must present a legal charge of crime, and must disclose the grounds of the charge whether the evidence is circumstantial or direct. Your excellency will scarcely contend that, if the testimony contained in an affidavit establishes no fact warranting an inference unfavorable to the accused, it nevertheless constitutes a legal charge.

You very properly suppose that an affidavit stating facts upon information and belief would be insufficient, while you quite distinctly imply that a decision to that effect would subject a magistrate to the charge of being over-scrupulous of the rights of felons. The question, however, is unimportant here, since Mr. Flournoy does not even state, upon hearsay and belief, the facts constituting the charge.

Your excellency is apprehensive that if all the facts and circumstances relied upon in a complaint of felony should be set forth in a charge, the executive to whom the charge should be submitted, might subject the details to a critical and technical analysis, for the purpose of searching out the absence of felonious design. I have before shown that all such facts and circumstances must be submitted to a grand jury, and even to a justice of the peace, if the complaint be preferred before that officer. Those tribunals are respectively bound to institute such an analysis as you have described. I confess myself at a loss to know either why a chief magistrate, when called upon to arrest an accused person, should require less accurate information than an inferior tribunal, or why he should not be held responsible for equal caution and scrutiny.

In my former communication, I submitted to you that it appeared, from the statements of the agent who delivered your requisition, that the transaction referred to in the affidavits was

entirely different from the offences supposed to be charged therein; but I, at the same time, stated that my decision was grounded, not upon this discrepancy, but upon the defectiveness, of the charges. It can not, therefore, be necessary now to consider the hypothetical cases you have put, or to answer questions which, by putting such cases, you have thought proper to raise. Whether the enticing a slave by persuasion to leave her master, or inducing her to leave his premises, when the slave walks away of her own free will, constitutes a felonious taking and carrying away of the slave; whether the luring of a slave from her master, by awakening her hopes of freedom, and assisting her to escape from bondage, is an act to be classed in the same category with the act of tempting a neighbor's horse with a bundle of hay, and appropriating the animal to the use of the wrongdoer; whether, if it were admitted that to persuade a slave to regain her liberty is to steal her from her master, and whether, if the slave wears her customary habiliments, the person who has persuaded her to flee can be charged with larceny of those habiliments; whether, if he can be charged with stealing the slave, his crime can be divided into two larcenies, and he be subjected to two several punishments, the one for stealing the person of the slave, and the other for stealing the garments worn by her; whether it is held in this state that the laws of other states, establishing or recognising the relation of master and slave, contravene the constitution of the United States; and whether it is maintained here that the constitution of the United States, and the laws of the United States passed in pursuance thereof, do not recognise in the states the existence of the relation of master and slave, and of property on the part of the master in the person of the slave; these, and other questions propounded in your communication, and upon some of which I might perhaps have the misfortune to differ in opinion from your excellency, need not now be discussed, because they are not involved in the case you have submitted. Regarding unnecessary discussion of such questions between the authorities of the several states as of questionable advantage, I must be excused for declining to enter such a one, until your excellency shall present a case requiring an examination of those grave and interesting subjects. Whenever such a discussion shall become a duty, I shall not hesitate to engage in it, with an anxious solicitude to arrive at the truth,

and to maintain the inalienable rights of man, the sovereignty of the states, and the integrity of the federal union.

I have the honor to remain your excellency's obedient servant.

His Excellency Charles J. M'Donald,
Governor of the State of Georgia.

LETTER III.

TO THE GOVERNOR OF GEORGIA.

State of New York, Executive Department,
Albany, October 12, 1841.

Sir: Notwithstanding I have given a very careful consideration to the arguments and suggestions contained in your excellency's letter of the 3d of September last, I am constrained to declare my adherence to the opinions I have heretofore expressed.

The law directs, that a requisition shall be accompanied either by a copy of an indictment, or by an affidavit charging the fugitive with treason, felony, or other crime. Your excellency's requisition is accompanied by two affidavits, charging, as you contend, two distinct larcenies; while I, on the contrary, have insisted that both affidavits were insufficient, on the ground that neither of them *legally* charged crime of any kind. The language of the charge in each case, was, that the defendant "feloniously stole, took, and carried away," in the one case, "three blankets, two shawls, three frocks, one pair of ear-rings, and two finger-rings, all of the value of fifty dollars, of the goods and chattels of the complainant;" and in the other case, "a negro woman slave, named Kezia, of the value of five hundred dollars, also the property of the complainant."

Whether these affidavits *legally* conveyed charges of larceny, was the point on which the difference arose between your excellency and myself.

We have heretofore, at least, agreed, that a charge which was made the basis of a requisition, must be such a one as would

authorize a justice of the peace to commit the accused, and that my legal discretion was not inferior to that of such a magistrate.

My objection to the affidavits is, that they are vague and inconclusive, *because* they are *mere allegations* of the complainant, that the accused has committed larcenies, and do not set forth the *facts and circumstances* of the *alleged* offences, so as to enable *me* to determine whether a *crime* has *actually* been *committed*, and whether there is probable cause to suspect the *alleged offender*.

To establish the position I assumed, I quoted passages from Blackstone's Commentaries, from Chitty's Treatise, from Lord Hale's history, and from a treatise by Barbour.

Your excellency denies my position, and disposes of my authorities, by saying that the passages quoted, are *advisory* only to justices of the peace, and that they are mere *dicta*, unsupported by any *adjudication*, that a warrant, would be void, if issued upon a complaint, which did not contain a statement of the facts and circumstances upon which the charge proceeded.

Your excellency will indulge me with the remark, that even if the language of the respectable authorities quoted, were merely advisory, no reason has been shown why the advice should not be adopted by a chief-magistrate in reference to so important a process as that of requisition. It was incidentally remarked by me, that the general principles laid down by the authorities quoted, were derived, not from enactments of any of these states, but from the common law as received in all the states. In making this observation, your excellency thinks that I "fell into a great error," because your excellency supposed that the principles had no earlier or higher authority, than the act of the state of New York, entitled "An act to abolish imprisonment for debt and punish fraudulent debtors." To say nothing of the weight given to those principles, by the *recognition* of them in an act of the legislature of the state of New York, the question recurs; were those principles derived from the common law? Magna Charta declared the rights of the people of England, as those rights existed in the common law. After the passage of that act, it was for a long period insisted, and was held by Lord Coke, that no person could be taken, or arrested, upon an *accusation* of crime until after the finding a bill of indictment, *which alone*, it was contended, afforded *probable evidence* of *guilt*. All the *deviations*

from *this* rule have been considered encroachments on the common law. (Chitty 1. 13.) Hawkins, as your excellency will undoubtedly recollect, admits that justices *claim* the power of issuing warrants upon complaints on oath, by "*connivance*," rather than by any express warrant of law, and that it was gradually sanctioned by the courts, upon the grounds of necessity and public policy. (2d Hawkins, 85.) On *this* ground, the learned commentator *advises* that justices *can not be too tender* in proceedings of this kind.

These references will, I trust, not only convince your excellency that the principles in question were derived from that ancient and copious fountain of justice, the common law; but will also show sufficient reasons for their being presented in the form of *advice* to justices of the peace; and will prove further, that instead of there being any obligation requiring *me* to quote judicial decisions resting on these principles, it remains with your excellency to produce such decisions overruling them. The propriety of this last suggestion seems also to have occurred to your excellency; and with that view, you refer to the case of the *United States* against *Johns*. (4 Dallas, 412.) You observe, that it was held in *that* case, that the oath of the complainant, charging the accused with having scuttled a schooner on the high seas, with intent to defraud the underwriters, as the deponent believed, afforded sufficient evidence of probable cause, to warrant a commitment. And you further remark, that there was, in *that* case, no *detail of facts and circumstances*. To this I might reply, that "*scuttling*" a vessel on the *high seas could not be* with *any other than* a *criminal intent*. The "scuttling" was itself the fact which constituted the crime, and the affidavit which set it forth, was, by that *single fact*, rendered sufficient as a legal charge of crime. I might add, moreover, supposing your statement of the case to be correct, that if there had been a more detailed statement of facts and circumstances, no question as to the sufficiency of the charge would have gone to the court; but there is a more conclusive answer. Your excellency will find, on referring again to the case, that the question before the court was, *not* upon the *sufficiency* of the *affidavit*, but solely upon the validity of the *warrant* of *commitment* issued by the mayor of Philadelphia. It was inquired whether the *warrant* was not too *vague;* but not a word was said about the affidavit. As the

authorities I have cited show, the *magistrate* is in *all* cases competent to decide whether there is *probable cause* for *commitment.* Your excellency next refers to the case of Clark in the supreme court of this state (9 Wendell, 220); the case, which, according to your excellency, I am not at liberty to question, and which you affirm, conclusively refutes every principle for which I have contended. I assure your excellency, that I shall not unnecessarily incur the charge of temerity, by questioning the authority of the supreme court of New York; but if your excellency will have the goodness to revert again to the report, you will find that there the question was, whether the supreme court would try the *truth* of the charge contained in the affidavit which accompanied the requisition addressed to the governor of this state, which *charge* the governor had decided was sufficient. There was no question concerning the *validity* of the *charge;* all that was decided was, that the court *would not try* the *fact* whether the accused was *guilty.*

In regard to the *merits* of the present question, your excellency will allow me to remark, that it is of the very nature and essence of a *charge* and even of an *affidavit*, that it contain *only facts*, not *opinions* nor allegations of suspicion. An affidavit is defined in law, to be an averment of *some fact*, in writing, and sworn to, before some person who has authority to administer such oath. (1 Lilly, 44, 46.) An affidavit ought to set forth *the matter of fact only* which the party intends to *prove* by the instrument, and *not* to declare the *merits* of the case, of which the *court* is to judge. (21 C. 1 B. R.) Again, the matter sworn to must be *positively set forth*, with *all material circumstances attending it*, that the *court* may judge whether the *deponent's* conclusion be just or not. (1 New Abr. 66.) I have before shown, that a justice, in deciding on granting a warrant, should regard, not *mere allegations* of suspicion, but the *grounds* of suspicion (Barbour, 455); that the *facts* and *circumstances* must be laid before him, and these should be sufficient to make it appear that a *crime* has *actually* been committed, and that there is probable cause for charging the *person complained* of with the *commission* of that crime. (1 Chitty, 33.)

Larceny is the unlawful taking of one man's goods, by another, with *intent* to convert them to his own use. It is essential to the offence, not only that the goods should be *taken* and *carried away*,

but also that they should be so taken *with knowledge* that they *are* the *property* of *another*, and with intent to dispose of them, or convert them to the use of the taker. It is the combination of unlawful taking and asportation, *with* such *knowledge* and such *intent*, that renders the act a violation of law, and constitutes it a felony.

Mr. Flournoy swears that the defendant feloniously took and carried away the person and property mentioned by him, in violation of the laws of Georgia. As the unlawful intent of the taker must be inferred from the facts and circumstances, what (if your excellency pleases) is Mr. Flournoy's statement but "an *allegation* of *suspicion*" that the taking was with knowledge that the supposed goods belonged to another, and with an intent to convert them, and that such taking was therefore unlawful and felonious, without a disclosure of the grounds of such suspicion? Or in other words, what is the affidavit but the declaration of an opinion, or conclusion, without the facts and circumstances from which such opinion or conclusion was inferred? What else is it but declaring, not the facts and circumstances, but the "merits of the case," upon which merits, not the deponent, but the magistrate, is to judge? If this be so, then the words "feloniously," and "in violation of the law of Georgia," whatever might be their importance in another stage of a criminal procedure, are inoperative in the affidavits. Those words neither add to, nor take from, the legal substance of the affidavits, and they might be struck out without impairing or varying in any manner the legal effect of the affidavits as charges of larceny.

I am again under the necessity of acknowledging my obligation to your excellency for the suggestion, as you are pleased to express yourself, "that the affidavits must be further mutilated by striking out the word 'stole,'" before those instruments will cease to convey charges of larceny. I freely acknowledge that the word "stole," upon which you insist, belongs in the same category with the technical terms which I contend are inoperative. Inasmuch as that word is only a technical description of the transaction, and as the propriety of its application depends upon all the facts and circumstances of the case, and only on those facts and circumstances, I certainly have no hesitation in saying that the word "stole" may be discarded without altering

in any degree the legal import of the affidavits, while testing their legal sufficiency as charges of crime.

Your excellency is pleased to say that the position which I *seem* to maintain, that a man, who, by affidavit, charges another with having feloniously stolen, taken, and carried away property in violation of law, *when it was well known to the accuser that such taking and carrying away were lawful and not felonious*, can not be convicted of perjury, is not founded in law, and that in such a case it would be difficult to establish the innocence of the complainant by an allegation that his unjust charge was the result of an erroneous legal inference. Your excellency will, I trust, allow me to exonerate myself from having presented such a paradox. My position was, that, if the deponent *erroneously supposed* that the taking and carrying away were unlawful and felonious, he could not be convicted of perjury, although it should afterward appear that the taking and carrying away were lawful. I am happy to see that the position thus stated has not been controverted. Your excellency will remember that I inferred from it the necessity of insisting upon such a detail of the facts and circumstances constituting the supposed offence, as would show that the accusation was groundless, or if they supported the charge and were false, would expose the complainant to a conviction.

In conclusion, I must beg leave respectfully to observe that your excellency has presented to me a requisition, demanding that John Greenman be surrendered to you upon vague and defective affidavits, pretending to charge him with two distinct larcenies, committed at the same time, and as the papers submitted would lead me to suppose, on the same occasion: that the facts and circumstances relating to the transaction are not shown, but there is some reason to believe if they were shown, they would disclose that the two transactions, if unlawful, constituted one crime, and not two distinct larcenies, as your excellency has supposed: that the alleged larceny of the slave consisted, not in taking or carrying her away with an intent to dispose of her for the benefit of the accused, but in persuading, and, perhaps, assisting her to regain her liberty: and that the alleged larceny of clothes and baubles consisted, not in taking or carrying them away, with intent to convert them, but in the fact that the slave, thus persuaded and aided to seek her escape from servitude, car-

ried them away upon her own person. It is my purpose on the present occasion not to decide, whether either or both of these supposed offences fall within the definition of larceny, but only to decide, after the most respectful consideration of your excellency's argument, that each of the affidavits is too vague and uncertain to convey a charge of that crime.

Tendering to your excellency renewed assurances of very high respect, I remain your excellency's most obedient servant.

His Excellency Charles J. M'Donald,
Governor of Georgia.

LETTER IV.

TO THE GOVERNOR OF GEORGIA.

State of New York, Executive Department,
Albany, October 26, 1841.

Sir: I am honored by a communication from your excellency, bearing date on the 8th of this month, in which you state that Alanson Greenman stands charged by the grand jury of Chatham county with the offence of simple larceny. Your excellency has transmitted a copy of the indictment, and demanded that I should cause the supposed fugitive to be arrested and detained in custody, to await your requisition.

The indictment contains three counts. The third count is in these words: —

"And the jurors aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse said Alanson Greenman, of said county and state, with the offence of harboring a slave. For that the said Alanson Greenman, in the county and state aforesaid, on the day and year aforesaid, a negro woman-slave, named Kezia, owned as aforesaid, did conceal, harbor, and hide, and caused to be concealed, harbored, and hid, to the injury of said Robert W. Floturnoy, owner of said slave Kezia, and contrary to the laws of said state, the good order, peace, and dignity thereof."

Harboring, hiding, and concealing a slave, however immoral or unlawful, do not necessarily constitute a larceny of the slave.

This count of the indictment, therefore, does not sustain your excellency's demand.

The second count is in these words: "And the jurors aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said Alanson Greenman, of the county and state aforesaid, with the offence of enticing a slave to run away from her owner, with the intention to appropriate said slave to his own use, and to deprive the owner of the services of said slave. For that the said Alanson Greenman, in the county and state aforesaid, on the thirteenth day of April, in the year one thousand eight hundred and forty-one, one negro woman-slave, named Kezia, of the goods and chattels of the said Robert Willis Flournoy, then and there being found of the value of one hundred dollars, did, by enticement, and by giving a pass, and by other means, induce said slave Kezia, owned as aforesaid, to run away from her owner, said Robert W. Flournoy, with the intention to sell said slave, and otherwise to appropriate said slave Kezia to his own use, to wit, to the use of said Alanson Greenman, and thereby to deprive the owner of said slave Kezia, to wit, Robert W. Flournoy, of the use and services of said slave Kezia, to the great damage of said Robert W. Flournoy, and contrary to the laws of said state, the good order, peace, and dignity thereof."

The offence here charged is kidnapping a human being, with intent to sell her into slavery, or hold her in compulsory service. This is a crime repugnant, not only to the laws of Georgia, but to natural justice, and to the laws of this state and every civilized country. Nor is it any less a crime, although the grand jury have complained of the wrong as one committed, not against the person wickedly kidnapped, but against Mr. Flournoy, who, by the laws of Georgia is permitted to hold her in bondage. I am obliged, however, to assume that the facts and circumstances of the transaction will not sustain the charge of so atrocious a crime, since your excellency has not thought proper to make this count in the indictment the ground of your demand. I beg leave to assure your excellency, that I shall cheerfully comply with a requisition accompanied with a charge of kidnapping, in any case where there are not good grounds to induce a belief that the charge is false and malicious.

The supposed charge of larceny is found in the first count of

the indictment, which, omitting the names of the jurors, is as follows: "The grand jurors, sworn, chosen, and selected, for the county of Chatham, in the name and behalf of the citizens of Georgia, charge and accuse Alanson Greenman, of the county of Chatham and state aforesaid, with the offence of simple larceny. For that the said Alanson Greenman, in the county aforesaid, on the thirteenth day of April, in the year one thousand eight hundred and forty-one, a negro woman-slave named Kezia, the property of Robert Willis Flournoy, of said county, of the value of one hundred dollars, then and there being found, wrongfully and fraudulently did take and carry away with intent to steal the same, contrary to the laws of the said state, the good order, peace, and dignity thereof."

It is essential to an indictment for larceny that it allege that the taking and carrying away were felonious and with intent to convert the goods to the use of the taker. The grand jury in the present case do not allege that the taking was felonious and with intent to convert. The indictment, therefore, charges only a trespass, not "treason, felony, or other crime." It is true the grand jury represent that the taking was fraudulent and unlawful, and with intent to steal; but not every fraudulent and unlawful taking is felonious, and the intent to steal can not exist when the goods are not taken with intent to convert them to the use of the taker. It is a felonious taking with intent thus to convert the goods, and not an intent to steal them, that must be distinctly charged. When the former is charged, the latter must be inferred.

I respectfully decline to comply with your excellency's demand for the reason that the indictment does not convey a legal charge of larceny. I beg leave, however, to observe that I am not to be understood as conceding that a human being can, in law, be regarded as "goods" and the subject of larceny. I respectfully reserve that question, and also the questions whether, if an indictment should charge a crime, I should be bound to surrender an offender thus charged, in a case where I had cause to believe the offence was constructive or groundless; and whether this is such a case.

Your excellency will, I trust, find enough in our past correspondence to justify the circumspection which I have deemed it my duty to observe on the present occasion. Your excellency informs me that the offence is the same with that mentioned

in certain affidavits of Mr. Robert Willis Flournoy, heretofore made the basis of a requisition for the same offender, and the dates refer to the same transaction complained of in those affidavits.

You will remember that by two very vague and defective affidavits, Mr. Flournoy induced your excellency erroneously to represent to me that the fugitive had committed two larcenies, when in truth the two supposed offences were one and the same transaction, incapable of division into two crimes. Confiding in Mr. Flournoy's very vague and erroneous notions of law, your excellency was led to insist for a long time upon the surrender of a person on a charge of having stolen from Mr. Flournoy certain goods; when, according to the facts of the case, the goods were the personal apparel of Mr. Flournoy's slave, and worn by her in her flight from her master; and the accused was in no other manner guilty of stealing than by persuading and aiding her to regain her liberty.

Dropping two accusations of larceny into which Mr. Flournoy has heretofore divided the transaction, he now represents it to a grand jury as constituting three other offences, to wit, trespass, kidnapping, and secreting his slave.

I await your excellency's further communication on the subject, and have the honor to remain in the interval,

With very high respect, your excellency's obedient servant.

His Excellency Charles J. M'Donald,
Governor of the State of Georgia.

LETTER V.

TO THE GOVERNOR OF GEORGIA.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, December 27, 1841.

SIR: In the year 1839, a requisition was made upon the executive authority of this state, by the executive authority of Virginia, for the surrender of certain persons represented as having been charged with stealing a slave. The supposed fugitives having been committed to custody, went before a judicial officer, under a writ of habeas corpus, and were discharged, upon the grounds that the affidavits accompanying the requisition were defective in form, and insufficient to charge a crime even in the state of Virginia. The demand was, nevertheless, insisted upon, and the executive of this state, after a due consideration of the subject, decided that the affidavits were defective, unsatisfactory and insufficient, and therefore declined to issue a warrant in compliance with the requisition. The executive of this state foreseeing at the same time, that if the affidavit should be amended, a grave constitutional question must be decided; and unwilling even to seem disposed to evade such a question by technical proceedings, submitted an opinion that the supposed offence of stealing a negro slave from his master in Virginia, as defined by the laws of that commonwealth, was not a crime within the meaning of that provision of the constitution of the United States, which authorized the demand and surrender of fugitives from justice. The executive of Virginia controverted this opinion. The very important question, thus raised, has been the subject of a correspondence between New York and her sister-state, which, although it was conducted on both sides with a sincere desire to avoid collision and to arrive at an adjustment, has, nevertheless, resulted in proceedings on the part of Virginia, believed to be in

conflict with the constitution of the United States, and prejudicial to the harmony of the American family.

Your excellency was pleased in June last, to address to the executive of this state a requisition, in a case which, supposing the proofs accompanying the demands to have been sufficient in form and substance, would have presented the same question.

It would have been presumptuous to suppose, without evidence, that the existence of the difference which had unhappily arisen between this state and Virginia, was at all known to your excellency; but it had been made known to the executive of this state, through the courtesy of the late distinguished chief-magistrate of Virginia, that in obedience to the request of the general assembly of that commonwealth, he had submitted the correspondence to your excellency. Although it was not understood by the executive of New York, what results, auspicious to the harmony of the states, were expected to follow from a discussion of the same question with another party; yet no disposition was indulged to deny for a moment your excellency's right to a decision upon the question submitted, or to decline a discussion of the grave subject, which, according to your views of the case, it involved. But your excellency had inadvertently suffered the subject to be presented under some embarrassments. Your excellency had seen fit to combine with your charge of stealing a female-slave, a supposed charge of stealing the blankets, shawls, frocks, and rings, worn upon her person, and from the precedence assigned to that offence, it was understood that it was deemed the more important one. There was the further difficulty, that neither charge was presented with legal formality and certainty. The executive of this state respectfully called your attention to these circumstances as insuperable objections to a compliance with the requisition. Your excellency was pleased in due time to supersede the former case, by a requisition grounded upon an indictment, from which it appeared that the supposed larceny of the slave's clothing and ornaments was no longer insisted upon, but that the transaction was presented in three new aspects.

In the communication from this department, made on the 26th of October last, your attention was solicited to the considerations that harboring a slave was not necessarily criminal, and that the charge of that offence had not been adopted in the new requisition, and that the kidnapping alleged in the

second count was also overlooked in the requisition. It was remarked in regard to the count, which you insist charges a simple larceny, that it was essential to every indictment for that crime, that it should show that the taking was felonious, and with intent to convert, and that the grand jury had omitted so to define the taking in the case submitted. Your letter of November 22d insists only upon the charge of larceny of the slave. The executive of this state has much pleasure in acknowledging that the case is now rendered more simple than it was at any former period; the charges of stealing the apparel and trinkets, of harboring the female, and also the very grave offence of kidnapping, being no longer in question. In regard to the point still adhered to by your excellency, the executive of this state has the misfortune of being unable to find in the offence which your excellency pronounces a simple larceny, anything different from a simple trespass. Not controverting the position that, according to the common law, the word *feloniously* is necessary in every indictment for larceny, your excellency, nevertheless, is pleased to remark that, according to that standard, it is not necessary that the indictment should allege that the taking was with intent to convert the goods to the use of the taker. Since you prefer that the proposition of the executive of this state shall be amended so that it will read "that the word 'feloniously' is necessary in every indictment of larceny," and shall altogether omit what is said of the necessity of alleging an intent to convert the property to the use of the taker, it may be so read, and in that form it remains unquestioned. Inasmuch, then, as your indictment does not contain the word "feloniously," it is defective and insufficient, and charges only a trespass. Your excellency's implied concession to this effect is defensible upon the authority of Chitty, who, speaking of necessary words in indictments for felony, says: "and these words are so essential, that if the word 'feloniously' be omitted in an indictment for stealing a horse, it will be only a trespass." But, although it is no longer necessary, your excellency will allow the executive of this state most respectfully to insist on the position before maintained, that it is essential to an indictment for larceny, that it show the taking to have been with a felonious intention to appropriate the property to the use of the taker, and to refer you (as it would be presumptuous to do if the absence of references had

not been marked by your excellency) to Chitty's Treatise on Criminal Law. That author, speaking of indictments, says: "Larceny is the wrongful taking and carrying away of the personal goods of any one from his possession, with a felonious intent to convert them to the use of the offender, without the consent of the owner (2 East. P. C. 553, Leach 838). To constitute this offence, therefore, in any form, there must be a taking from the possession, a carrying away against the will of the owner, and a felonious intent to convert it to the offender's use." (Vol. 2, part 2, page 674.) By referring to the argument you have reviewed, your excellency might find that it was admitted that if the taking was alleged to be *felonious*, the intent to convert to the use of the offender might be inferred; but it was also insisted that the grand jury, not having used the word "feloniously" nor alleged the taking to have been with an "intent to convert," the intention could not be inferred from the indictment.

Having, then, so obviously arrived at an agreement in the proposition that the indictment charged only a trespass instead of a larceny, the executive of this state would have been at liberty to hope that your excellency would at once have acquiesced in the propriety of withdrawing the demand, thus terminating our correspondence without its reaching a result which you have on several occasions very emphatically deprecated. But your excellency, influenced by a desire to remove all remaining difficulties, has involved the subject in a new embarrassment, by showing me that the code of Georgia adopts a different definition of larceny, and, overruling the common law, defines that crime in words similar to those in the count upon which you insist. The applicability of the explanation is not understood, unless it be your object to show that in the code of Georgia, the term "larceny" is substituted for trespass, in distinguishing offences which are not felonious, and are either misdemeanors or private wrongs. Since, then, such are the laws of Georgia, the executive of this state can readily admit, what before seemed incredible, that the statement of the case made by your excellency's agent was correct, and that a demand was presented in the forms of law alleging a charge of larceny, when, in truth, the accused had neither taken nor carried away the supposed property, nor had ever had it in his possession, nor manifested an intent to convert to his own use. It is not now insisted, although we may

reach such a point hereafter, that no being having a human form and substance, soul and body — even though of that sex whose weakness, combined with gentleness, is a sure protection against oppression among civilized men, no matter what shade may have been burned on her brow, nor how long her ancestors may have been held in bondage, nor even though her own limbs may have worn chains from her very birth — can be the personal goods of any frail creature like herself. Before arriving at that question, another invites consideration. Your excellency will find, in the first communication submitted to you by the executive of this state, the statement made by your agent. This statement was submitted to you, with a remark, that if it was true, you must have misapprehended the transaction complained of, and it was therefore that the executive of this state felt more especially bound to insist upon a more full and complete presentation of the facts and circumstances of the transaction than was given in the very defective affidavits of Mr. Flournoy. Although in your excellency's reply, under the date of the 28th of June last, not adverting to the fact that the statement was not assumed to be true, but was submitted to you for explanation, you were pleased to intimate a doubt of the propriety of its reception by the executive of this state, yet your excellency did not controvert the statement, and was understood to affirm it, or at least consent, that it should have the weight of truth, inasmuch as you mentioned that the facts made out a case of larceny, and, beyond question, sustained the charge which it contained, of stealing the slave. It is true, that in your letter now before me, you remark that the justification of the executive of this state thus repeated, to wit, "that the accused was in no other manner guilty of stealing than by persuading and aiding a slave to '*regain*' her liberty, is not founded in fact." But this denial is understood to rest upon what you consider an erroneous use of the word "*regain*," from your having emphatically marked that word in the manner in which it is herein transcribed, and from your observation that the female was "born a slave, and has so continued since her birth." Your excellency's generosity will allow your correspondent to state, by way of explanation, and not for controversy, at the present time, that the expression of regaining liberty is idiomatic in this community, where all slavery is regarded as having its only origin, authority, and defence in

physical power, and where it is universally admitted, in the language of the charter of American liberty, that all men are born free and equal, and have an *inalienable* right to life, liberty, and the pursuit of happiness.

Your excellency will bear in mind that you stated in your second process that the person demanded and the offence alleged were identical with those described in the first. If, besides Mr. Flournoy and the magistrate, before whom the affidavits were made, so high an authority as the chief-magistrate of Georgia, considers that to persuade a slave to seek liberty, and to aid her in her flight from servitude, constitute beyond question a crime of larceny—and if the judicial forms used in the state of Georgia confound simple trespasses with larceny, as your excellency's last communication would seem designed to show—then the executive of this state can not exclude an apprehension that, in the present case, the grand jury of Chatham county may have presented a mere trespass in the form of a bill of indictment for larceny, a proceeding which can not receive the sanction of the executive of this state, unless subsequent reflection shall remove the present conviction that such a course would tend to confound all notions of moral right, and be dangerous to personal liberty.

Desirous always to surrender any citizen of this state to any of our sister-states, whom he may have offended, the executive can not, at the same time, forget that the rights of every citizen would be brought into jeopardy by his compliance with a demand in which there was so much reason to doubt whether a crime had actually been committed, no matter how unworthy of sympathy or favor the supposed fugitive might be.

Your excellency will, therefore, understand that a compliance with your demand is deferred until some further explanations shall be received to show that there was a taking of the slave with a felonious intent to convert her into property by the offender.

I have the honor to remain, with very high respect, your excellency's most obedient servant.

His Excellency Charles J. M'Donald,
Governor of Georgia.

THE M'LEOD CASE.

LETTER I.

TO THE SECRETARY OF STATE OF THE UNITED STATES.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, February 27, 1841.

SIR: I have the honor to acknowledge the receipt of your letter of the 19th instant, with which was transmitted a copy of a recent correspondence between the department of state and her Britannic majesty's minister to the United States, relating to the case of Alexander M'Leod, a British subject, who was arrested at Lewiston in November last, and is now detained at Lockport, on a charge of having been engaged in the capture and destruction of the steamboat Caroline in the year 1837.

You will please make known to the president, that at a recent term of the general sessions of the peace held in and for the county of Niagara, Alexander M'Leod, who is the subject of the correspondence, was indicted for the crime of arson committed in the transaction to which you have referred. The executive authority of this state is not informed of the nature of the testimony which was submitted to the grand jury, but no doubt is entertained that it was sufficient to justify the finding of a true bill. Notwithstanding the legal presumption against the prisoner, it is understood that he asserts confidently his innocence of any agency in the capture and destruction of the Caroline. A just regard for the honor of this state, as well as a due consideration of the importance of the case to the prisoner, and the possible influence of the result of the proceeding upon the relations existing between this country and Great Britain, has seemed to

me to require that the accused should have a fair and impartial trial; that if he participated in the incendiary and murderous transaction with which his name has thus been connected, he should suffer the penalty which our laws prescribe; and that, on the other hand, if he be in truth innocent, the justice of our country ought to manifest itself in his acquittal, notwithstanding the public indignation which the crime laid to his charge has so justly called forth. Influenced by these views, I had, previously to the receipt of your communication, deemed it my duty to require the chief-justice of the supreme court of judicature of this state to preside at the trial of the cause, and had directed the attorney-general to conduct the prosecution. The trial will be brought on at the next court of oyer and terminer to be held in the county of Niagara on the fourth Monday of March next, unless the prisoner shall interpose reasons for delay, or avail himself of his right to demand the removal of the cause out of the court of oyer and terminer, with a view to obtain a change of venue to some other county than that in which the indictment was found. Be pleased to assure the president, that, so far as shall depend upon me, nothing shall occur in regard to the case, inconsistent with the views I have expressed.

The views of the president as exhibited in the correspondence before me are fully concurred in, and his action in accordance with those views will be duly supported by the public authorities of this state. Those authorities desire that all the amicable relations of the country may be continued, and they are especially solicitous for the preservation of the harmony which happily for both parties has so long existed between the United States and the great nation, one of whose provinces is upon our northern borders. Nevertheless the public authorities of the state, as well as the whole people, are obliged by a proper sense of the national honor, and by every consideration affecting the general security, to regard the transaction in which the prisoner is alleged to have participated, "as an unjustifiable invasion in time of peace, of a portion of the territory of the United States, by a band of armed men, resulting in the destruction of American property, and the murder of one or more citizens" of this state. The crimes committed in the aggression, as you have well observed, fall within the jurisdiction of this state, and its authorities, under the provisions of the constitution, act in regard to those crimes, indepen-

dently of the federal government. If the parties engaged in them could have been seized at the time of the aggression they would have been amenable to the laws they had violated. Alexander M'Leod, having voluntarily come within the jurisdiction of this state, and while here being under the protection of its laws, it is not perceived how his government can justly complain that he was arrested upon the same probable cause, has been detained by the same process, is required to answer in the same form and before the same tribunals in the same manner that citizens of this state are charged, detained, and brought to justice for crimes of the same description with that of which he is accused. Neither the laws of the United States, nor those of this state, would permit the federal government to comply with the demand of her Britannic majesty's minister for the release of the prisoner, and the president is certainly very right in supposing that such an interposition on his part, if it were otherwise possible, could not constitutionally be acquiesced in by the authorities of this state. On the contrary those authorities not only deem the subject as falling within their appropriate province, but they have also unhesitatingly approved of the application made by the president, upon the government of her majesty, for explanation in regard to the original aggression, and they respectfully assure the president of their satisfaction with his renewed demand contained in the correspondence under consideration.

I beg leave to state that I am not informed concerning any grounds for the representation of her Britannic majesty's minister, that the prisoner's preliminary examination was tedious and vexatious. An examination before commitment is a proceeding which we have derived from the laws of Great Britain, and is enjoined upon magistrates here as well as there, and in all modern countries where liberty is known, out of tenderness to the accused, and not with a view to oppress or harass him. Such was the object of the examination in the present case, and so far from having been conducted so as to be unnecessarily tedious or vexatious, I am assured that the presiding officer was influenced throughout by a hope that it would appear on the examination that the prisoner was not concerned in the destruction of the Caroline.

Her Britannic majesty's minister not only demands the release of Mr. M'Leod, but insists that it is both just and necessary

that the government of the United States shall take such steps as may be requisite for preventing others of his countrymen from being persecuted or molested in the United States in a similar manner for the future. It is to be presumed that this extraordinary suggestion is made for some other purpose than to produce on this side of the frontier, excitement and indignation corresponding with what her Britannic majesty's minister represents as existing in Canada. So far as it may be intended to apply to this state, I am free to say that no such impunity as seems to be desired for her majesty's subjects can be expected. The people of this state, determined to be rigidly just, have seen without remonstrance, although not without sympathy some of their fellow-citizens who under the influence of appeals made to them by British subjects had disturbed the peace of Canada and violated its laws, abandoned to the justice of the British government. They have not complained nor asked the interposition of their government, although many of their fellow-citizens who had thus offended were tried and condemned, in some instances to death and in others to banishment to an island in the South seas, under special laws and by extraordinary courts proceeding without the intervention of a jury and without the forms of the common law. But the people of this state exact the same measure of justice and respect that they concede to others. It is certainly a matter of regret that the arrest, detention, and trial of one of her majesty's subjects charged with the crime of arson, committed within this state, should be regarded by her majesty's representative as persecution and molestation. But such proceedings are necessary to preserve the public peace, and to the dignity of the state, whether the offenders be our own citizens or the subjects of other countries, and the supremacy of the laws must therefore be maintained.

There is a part of the ground upon which the minister justifies the aggression at Schlosser which I can not pass without remark. It is admitted that the act was committed within the territory of the United States, which was a friendly power; but it is contended that the United States had been deprived through overbearing piratical violence of the use of its proper authority over that portion of the territory, and it is added that the authorities of New York had not even been able to prevent the artillery of the state from being carried off publicly at mid-day to be used as instru-

ments of war against her majesty's subjects. The people of this state have seen fit to establish a system of government in which no armed military force is maintained in time of peace, and its militia, the only force authorized by its constitution and laws, can not be called into active service without special legislation, except to suppress insurrection or repel invasion. The ordnance belonging to the state, like its other property, is thus left in time of peace, in its accustomed depositories without the protection of an armed force. It would be out of place here to speak of the wisdom of such a constitution. But it is pertinent to the present purpose to observe that the provisions of law for preserving the ordnance of the state have hitherto been found adequate for all emergencies resulting from any domestic cause. When, however, an insurrection unhappily occurred in an adjoining province, and British subjects complaining of oppression on their side of the frontier fled to this state, cast themselves upon the hospitality of the people, appealed to their generous sympathies, and enlisted a small band from among the inhabitants of the state in a cause represented to them as the cause of liberty and justice, a new and unforeseen emergency occurred. For a brief period, and until that emergency gained the attention of the federal government, within whose province it belonged, some of the ordnance of the state was seized and transported to the frontier by the Canadian agitators and their allies. But the federal government was prompt in asserting and vigorous in enforcing neutrality, and it can not but be remembered by her Britannic majesty's minister, that the public authorities of this state and its militia rendered to government their cheerful and efficient co-operation. The good faith and energy of the general government and of the government of this state in the emergency, were never questioned by any representative of the British government until now. It can not be unreasonable, therefore, to suppose that the conduct of the authorities of this state would have continued to be regarded with candor and justice, if it had not happened that in order to maintain the recent extraordinary demand of her majesty's minister, it was at last found necessary to justify the original aggression out of which the subsequent difficulties have arisen.

In his letter of the 8th of February, her Britannic majesty's minister complains that Mr. M'Leod, after having been admitted to bail by order of the judicial authorities of this state, was again

made prisoner and replaced in confinement in Lockport jail, in obedience to a lawless act of popular violence. No official advices have been received by the executive of this state concerning the transaction thus complained of. From the information which has reached this department, it is quite certain that you are correct in assuming that the conceptions of the minister on that subject are erroneous. So far from its being true, as seems to be supposed by him, that the prisoner M'Leod, after having been admitted to bail by order of the judicial authorities of the state of New York, was again made a prisoner and was replaced in confinement in Lockport jail, in obedience to a lawless act of popular violence, I am informed that the prisoner has not at any time been relieved from imprisonment. If the accounts which have gained currency be true, as they probably are, a judge of the court of common pleas had taken into consideration an application made on behalf of the prisoner before the sitting of the grand jury, that he should be admitted to bail, and had made an order that he should be delivered to certain persons, who had executed a recognisance in the usual form, with a condition intended to secure the prisoner's appearance if an indictment should be found against him; but, before the order was executed, the bail were, at their own request, permitted to cancel the recognisance, and the order was thereupon vacated, and during all these proceedings the prisoner remained in custody. The latter order was as certainly within the legal province of the judge as the former, and the bail exercised a lawful right in receding from the responsibilities they had agreed to assume. There is, indeed, ground to believe that the occurrences were attended by manifestations of popular excitement. But, in the absence of authentic evidence, I should not willingly assume that those manifestations had any influence upon the judge in vacating the previous order, or upon the bail in retiring from their obligations. Whatever may be the truth on that subject, it belongs to the federal government to decide whether any just cause of complaint has been presented to the British government. I trust that it is not improper to state on my part, for the information of the president, that all the proceedings of the judge in this transaction were upon his own responsibility, in the exercise of discretion conferred upon him by law, and were altogether unknown to the executive authority of this state. The executive

learned, with equal surprise and regret, that without reference to the authorities of the federal government or those of this state, and before any session of a grand jury for the county had occurred after the complaint was made, the judge thought himself bound to admit a prisoner to bail in a capital case, upon which, inasmuch as it was known that it had been in its preliminary stages made the subject of diplomatic correspondence between her Britannic majesty's ministers and the federal government, it was not unreasonable to apprehend that consequences of peace or war might depend. Since the grand jury has passed upon the charge and affirmed its truth, the opinions previously entertained concerning the precipitancy of the judge have been confirmed. It is not surprising that, under such circumstances, some excitement should have arisen among the citizens on the frontier in the vicinity of the scene of the original aggression, who remembered the indignity their country had suffered, and who knew that the British government had not only neglected for almost two years to answer the demand of their government for explanation, but had, by its minister, recently justified the offence and demanded the unconditional release of the prisoner, whether innocent or guilty. Nevertheless, no authority of this state has justified or excused, or will justify or excuse, any popular demonstrations by which the judge may have been overawed in the discharge of his duty, much less will the public authorities approve his submission before such demonstration. To me, whatever may have been the nature of the proceedings referred to, it does not seem that either the prisoner or his government has any just cause of complaint against the United States. Upon the principles assumed by the federal government, the aggression at Fort Schlosser was an unlawful, a forcible violation of the laws of this state, resulting in arson and murder. The prisoner was arrested in due form of law, upon a charge of having been concerned in the proceeding. He was properly committed after a preliminary examination. The grand jury to whom the evidence was submitted has affirmed the charge. No one will contend that under such circumstances the prisoner ought to be allowed to go at large. The justice of the country requires that the case should be fairly and impartially tried, and that the accused should not avoid a trial by being admitted to bail. The national honor requires that the plea interposed in the prisoner's

behalf by the representative of her majesty, should be submitted, together with all the facts in the case, to a court and jury, that the prisoner may have a legal deliverance if innocent, and may be punished according to his deserts if guilty. The prisoner has suffered no personal violence, either from the public authorities, or from any act of any of the citizens of this state. Under these circumstances, it is respectfully supposed that the president will not deem himself called upon to answer the application of her majesty's minister, at least until the British government shall have answered the demand of the federal government, and rendered proper satisfaction for the original offence.

Nevertheless, I desire you to assure the president of my entire willingness to institute any inquiry on the subject which may be deemed essential, to contribute all the information I may receive, and to render him all the aid and support in my power in prosecuting such measures as he shall deem just and proper, with a view either to maintain the dignity and honor of the United States, or to preserve the relations of peace and amity with Great Britain.

The occasion seems to render it proper that I should suggest to the president, that while the transactions referred to, and others deeply affecting the public interests, indicate a possible disturbance of those relations, both the Atlantic and the northern frontiers of this state are without any sufficient means of public defence. I therefore respectfully beg leave to submit to his consideration the expediency of such preparations for the security of the people of this state, as in his better judgment, concerning the probabilities of war, may be deemed necessary.

I have the honor to be, with the highest respect, your obedient servant.

The Honorable John Forsyth,
Secretary of State.

LETTER II.

TO THE SECRETARY OF WAR OF THE UNITED STATES.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, March 17, 1841.

SIR: I have received your communication of the 12th instant in which you inform me that Major-General Scott has been directed to proceed to the Niagara frontier, and in passing through this city to confer with me as to the object of his visit. I am further informed by your communication, that General Scott is authorized, should circumstances require it, to call for such portion of the militia of this state, as he may deem necessary to carry out his instructions, and I am requested by the president of the United States to comply with his requisitions.

Major-General Scott has also submitted to me his instructions, from which I learn that the president is apprehensive of an attempt at an invasion of a portion of this state from the adjoining British province.

Fully satisfied with the explanations given to me by General Scott, and approving the prudential proceedings committed to his charge, I shall very cheerfully and promptly comply with the requisitions that may be made upon me by that officer.

I am, with the highest respect, your obedient servant.

THE HONORABLE JOHN BELL,
Secretary of War.

LETTER III.

TO MAJOR-GENERAL SCOTT.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, March 18, 1841.

SIR: I enclose a copy of a letter which I have just received from the honorable Samuel Nelson, chief-justice of the supreme court of this state, by which communication it appears that the trial of Alexander M'Leod will not be brought on at the oyer and terminer to be held in Lockport next week, and that the chief-justice will not be in attendance at that place as was expected. I regret the unavoidable delay which thus occurs in regard to this important cause. You will please inform me whether you shall deem it your duty under your instructions to proceed to Lockport, and to avail yourself of the requisition which was delivered to me this afternoon for a portion of the militia of this state. If such should be your purpose, the requisition will be complied with, but under existing circumstances I deem it unnecessary that the adjutant-general shall proceed to the frontier, unless you are of opinion that his attendance there is important. I shall immediately advise the president of the postponement of the trial of M'Leod.

With the highest respect, I remain your obedient servant.

MAJOR-GENERAL WINFIELD SCOTT.

LETTER IV.

TO THE SECRETARY OF STATE OF THE UNITED STATES.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, March 22, 1841.

SIR: The attorney-general of this state having been informed that the trial of Alexander M'Leod would not take place at Lockport during the present week, as was supposed, did not receive the instructions sent to him at that place, which in my letter of the 18th instant you were informed had been transmitted to him. Measures, however, will be taken to ascertain at what time, after the May term of the supreme court, it would be convenient for the counsel for the people, and the counsel for the prisoner, to bring on the trial at a special court of oyer and terminer for Niagara county.

It is understood that the aspect of the correspondence between this government and that of Great Britain has materially changed since the date of my letter, of the 27th February last, to the honorable John Forsyth, late secretary of state, and that the government of her Britannic majesty has formally assumed the responsibility of the destruction of the steamboat Caroline, and has demanded the surrender of Alexander M'Leod. It seems proper, therefore, for me respectfully to state, for the information of the president, that the views contained in my aforesaid letter to Mr. Forsyth have undergone no change, that in accordance with the opinions previously intimated, in the letter of Mr. Forsyth to Mr. Fox, the question of the responsibility of Mr. M'Leod, individually, for what is now maintained by the British government to have been a public duty, is one exclusively of judicial cognizance, and can be determined by no other than a judicial department, either in the federal government, or that of this state, and that in the present condition of the proceedings against that

person, it must be decided by the court having charge of the indictment against him.

I can not, consistently with a proper regard for the rights of this state, omit the opportunity of renewing the expression of my anxiety, that the most prompt and decided measures shall be taken to obtain from the British government suitable reparation for the outrages committed in the burning of the Caroline, and the death of an unoffending citizen, the responsibility of which that government has now taken upon itself.

I beg leave to assure the president that the officers of this state will be particularly instructed to afford every reasonable accommodation to the prisoner consistent with his safe custody, and that every facility will be afforded, necessary to secure to him a fair and impartial trial.

I have the honor to be, very respectfully, your obedient servant.

THE HONORABLE DANIEL WEBSTER,
Secretary of State.

LETTER V.

TO THE PRESIDENT OF THE UNITED STATES.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, May 4, 1841.

SIR: I have just learned from the public prints that the district-attorney of the United States for the northern district of New York, is in attendance upon the supreme court of this state, in behalf of Alexander M'Leod, who has been indicted for murder committed in the "destruction" of the boat "Caroline," and that the indictment is pending in the courts of this state. As the attorney-general of this state, and the district-attorney of Niagara county, have charge of this prosecution in behalf of the people of the state of New York, the unseemly aspect is presented of a conflict between the federal government and that of this state, which I respectfully submit to you, is not calculated to inspire confidence among the common constituents of both, nor to challenge that respect from Great Britain to which our institutions

are entitled, and which it is so essential to preserve, particularly in the present state of the controversy with her.

I am sure I need do no more than call your attention to the subject, to insure such a disposition of it, as will manifest the regard which there can be no doubt of your entertaining for the rights and character of this state, in the conduct of a prosecution for an offence against her sovereignty.

Very respectfully, your obedient servant.

His Excellency John Tyler,
President of the United States.

LETTER VI.

TO LORD SYDENHAM.

State of New York, Executive Department,
Albany, May 18, 1841.

My Lord: I acknowledge your excellency's letter of the 14th instant, informing me of your decision to surrender Charles F. Mitchell to the agent of this state, in compliance with my request. This act of enlightened courtesy is highly appreciated by myself, and I have no doubt will be viewed in the same light by the president of the United States, to whom it shall immediately be made known.

I regret to learn, from an allusion in your letter, that your excellency labors under some misapprehension concerning the detention of a British subject in this state. Whatever may have been the character of the original transaction, in consequence of which that person was arrested, he had the misfortune, before any affirmance of that transaction by the British government, to be indicted in one of our courts, and, as is said, upon confessions of his own, for the crimes of murder and arson, committed in this state. His detention is solely to answer that indictment, and your excellency may be assured not only that he shall have a fair and impartial trial, but, also, that if the assumption of the responsibility of his offence by his government ought, according to the common law, or the law of nations, to relieve him from personal responsibility, he will be acquitted for that cause alone, even if

under other circumstances he could be convicted of the heinous offences laid to his charge by the grand jury.

I am, with very high respect, your excellency's obedient servant.

His Excellency, the Right Honorable Lord Sydenham,
Governor of the Canadas.

LETTER VII.

TO THE PRESIDENT OF THE UNITED STATES.

State of New York, Executive Department,
Albany, May 10, 1841.

Sir: I acknowledge sincere pleasure in the confirmation of the belief I have all along entertained, that the district-attorney of the United States for the northern district, in appearing in the supreme court of this state as counsel and advocate against the people, and for a prisoner indicted for murder and arson, is acting without orders or direction from the president of the United States. I am left to infer, however, that the conduct of the defence of the accused by that officer in his unofficial capacity, and in pursuance of a previous retainer, is regarded as unobjectionable. Trusting that you may feel at liberty to consider suggestions leading to a different conclusion, I beg leave most respectfully to observe, that various and conflicting opinions prevail in this state concerning the guilt or innocence of the accused and his personal responsibility for the offence laid to his charge. These opinions are unavoidably affected by feelings and interests growing out of the disturbed relations between this country and Great Britain. There is happily, however, one sentiment in which all the people of this state concur, which is, that the questions involved in the prosecution of M'Leod can be settled no otherwise than justly and honorably to the state and the country, if the decision shall be made by the courts of law in the ordinary course of legal proceedings. At the same time, this confidence in the decisions of the courts could not remain unimpaired, if either the federal or state government were sup-

posed to interfere in any manner with the proceedings of the judicial tribunals.

The apparent want of harmony between the government of the United States and that of this state, exhibited by the appearance of the district-attorney of the United States as counsel, requires explanation. Fully impressed with the conviction that even an appearance of conflict would be as much regretted by yourself as it could be by the authorities of New York, I beg leave to submit with all respect, whether in so delicate a matter, that would not be the safer course, which would require no explanation. The prosecution must, at least, labor under a disadvantage, when it is seen that it is regarded by the federal government as possessed of so little justice or merit, that the legal representative of that government is left at liberty, to lay aside his official character, and appear against the state in its court. Our citizens will feel that if they can not have the aid of the federal government in a prosecution in which the honor and dignity of the state are concerned, they at least have a right to expect that that prosecution shall not encounter the opposition of any officer of the United States, even in his individual and unofficial capacity.

I can not see that that functionary, if he should be required to desist from the further prosecution of duties so incongruous with his official relations, would be obliged to make any sacrifice of personal interests and feelings different from that which is expected of every citizen when called to execute a public trust; and whatever his sacrifices might be, they would be altogether unworthy of consideration in opposition to the public welfare. I have no doubt that if the district-attorney should withdraw from the case, the court would allow his client ample time to procure other counsel.

In submitting these views, I am very desirous not to be misunderstood. I am governed by no vindictive feelings toward the prisoner. I desire that he may have a legal deliverance, if innocent, and may be convicted, if guilty. If the assumption of responsibility by the British government be a legal defence for him, I shall cheerfully submit to the decision of the court in that respect. But I desire also that the decision, whatever it may be, may not be attended with any circumstance which shall deprive it of its salutary effect, or in any degree diminish the confidence

which my fellow-citizens have hitherto indulged in regard to the firmness and patriotism of the government of the United States.

Be pleased to accept the assurance of high respect with which I remain your obedient servant.

His Excellency John Tyler,
President of the United States.

LETTER VIII.

TO THE PRESIDENT OF THE UNITED STATES.

State of New York, Executive Department,
Albany, May 20, 1841.

Sir: Your letter of the 15th instant has been received. It only remains for me to communicate with profound respect my dissent from your decision, and to state the grounds upon which that decision is deemed injurious to this state.

Your excellency is pleased to say, that although nothing is more customary than for district attorneys of the United States, in all the states, to appear in defence of causes, civil and criminal, in which the government has no interest, yet this is the first occasion on which such an appearance has been objected to.

I confess my surprise and exceeding regret in thus learning from the highest authority, that the government of the United States expressly disavows any interest in the cause out of which this correspondence has arisen. Permit me to state the nature of that cause, as it has been recognised by the president of the United States. A band of British subjects, armed, in a season of peace between their nation and ours, invaded this state under cover of the night, attacked an unarmed vessel lying in our waters, filled with defenceless people sleeping in supposed security, expelled them by violent and deadly assault, murdered one of our citizens and wounded others, and then cut the vessel from its fastenings, fired it, and sent it adrift down the falls of Niagara. Alexander M'Leod, having been found within our territory, has been indicted for murder committed in this transaction. The indictment was found upon competent testimony, including proofs of his own confession.

The government of the United States has heretofore avowed an interest in behalf of this state, in regard not merely to the injury thus committed, but to the cause which has arisen out of it, and is now depending in the supreme court. It has declared that the transaction described was an unlawful invasion of this state, resulting in the destruction of property belonging to inhabitants of this state, and the life of one or more of our citizens. When her Britannic majesty's minister, residing near this government, protested against the detention of Mr. M'Leod, the president of the United States, as the organ of New York and her sister-states, in their foreign relation, replied to the government of Great Britain, that the offence with which the accused is charged, was committed within the territory and against the laws and citizens of this state, and was one that came clearly within the competency of her tribunals. The president declined complying with the demand of the British minister, and declared that the circumstances urged by her majesty's representative, would not justify the interference of the president, even if he had the requisite power. The president further declared that no principle of international law, nor of reason or justice, entitled the alleged offender to impunity before the legal tribunals of the offended state, and that it was the undoubted right of the authorities of New York to vindicate, through the exercise of the judicial power, the property and lives of her citizens. The president further declared that such was the undoubted right of this state, even though the crime had been committed by authority of the British government, and was sanctioned by it, and notwithstanding the government of the United States had demanded redress of Great Britain for the outrage upon the peace, dignity, and rights of the United States, committed in the aggression at Schlosser.

The president of the United States having made these declarations, became constitutionally bound to maintain them, and to guaranty, defend, and justify the state of New York with the power of the nation, if necessary, in "the vindication of the property and lives of her citizens." New York was steadily and regularly pursuing that course of vindication, when the British government peremptorily demanded the discontinuance of the proceeding. It is at such a moment that the president informs the state of New York that the government of the United States

has no interest in the proceeding in which that state is engaged. I beg leave, most respectfully, to assure you, sir, that the declaration will be received by the people of New York with surprise and disappointment. Hitherto we have believed that our cause was the cause of the whole Union; that our honor was dear to all the members of the confederacy, and that our efforts to vindicate the property and lives of our citizens were favored with the sympathy, and entitled to the defence, of the government of the United States.

It is presumed that there can be no misunderstanding between the government of the United States and that of this state, on the subject in question. The executive of this state had the honor to communicate to the president an approval of the positions assumed by him, and every subsequent communication from this state has reaffirmed those positions on our part. Now that your excellency has made so unexpected a declaration, the question is not merely whether New York shall vindicate the lives and property of her citizens, but whether, after engaging in that proceeding with the sanction and guaranty of the president, she is to be abandoned by the government of the United States. Under these circumstances, it is believed to be my duty to assure your excellency that the dignity and honor of this state can not be compromised, nor her just claims upon the federal government relinquished.

If, as your excellency supposes, it be proper for the district attorney of the United States, for the territory within which the cause of action arose, to appear as counsel and advocate against this state, because he is by profession an attorney, such a proceeding would, on the grounds assumed by your excellency, be equally proper for the attorney-general of the United States, and even for the secretary of state, in whose care are the foreign relations of the country, if those functionaries should be members of the legal profession. It is not perceived that, in our republican system, the grade or dignity of the functionaries can affect the applicability of the rule your excellency has established. Large as are the privileges conferred by an attorney's license, it has nevertheless been heretofore supposed that the propriety of their exercise, by an individual who had acquired them, might be affected at least by his acceptance of a public trust.

I learn from the public prints, that, notwithstanding the presi-

dent has declared that the case in question belongs appropriately to the judicial authorities of this state, to the exclusion of the federal government, and has guarantied New York in the vindication of the lives and property of her citizens, by this very proceeding, yet that the functionary objected to is at this moment maintaining before the court having cognisance of the cause, that that tribunal is without jurisdiction, and that the exercise of any power over the prisoner by that court, or by any other authority within this state, is repugnant to the constitution and laws of the United States. I beg leave to say, that it would scarcely be less acceptable to the people of this state to know that these positions were assumed and maintained by the district attorney, by direction of the government of the United States, than it is to learn that he is permitted by that government to assert them upon a retainer, and for a reward and compensation paid by the offender. In the former case, there would be a directness which would command respect and induce consideration, on the part of the state, of the extraordinary position thus assumed by the president of the United States.

Again, the district attorney is maintaining at this juncture, before the supreme court, in direct opposition to the ground heretofore assumed by the president, that inasmuch as the prisoner's crime is alleged to have been committed in obedience to the provincial authorities of Upper Canada, and has been justified by the British government, without a tender of satisfaction or even of explanation on the part of that government for the original outrage, the accused is therefore not responsible in any court whatever. The British government has assumed the offence, has made the prisoner's cause its own, and has declared its determination to protect and defend him at all hazards and in every emergency. The cause, therefore, defended by the district attorney, is the cause of Great Britain, and the ground of defence is the position assumed by that government, and the converse of American ground. Under these circumstances, neither the obligation nor the disposition of her Britannic majesty's government to pay the reward and compensation, which you are pleased to say it is the right of the district attorney to earn, can be doubted. His retainer, therefore, may be assumed to be a retainer by the British government, and his services, in opposition to this state and the United States, to be paid by our arro-

gant adversary. It is respectfully submitted, that such a spectacle as the transaction now exhibits, if not unseemly, as I have heretofore supposed, is at least very little calculated to secure the confidence of New York, or command the respect of Great Britain.

The district attorney may indeed temporarily lay aside his commission, but he can not part with his official character and influence, and these are lent for hire to our antagonist. If he fail in his present efforts before the supreme court, he must renew the same defence before the court and jury to be charged with the trial of the cause. I earnestly hope that the influences thus improperly brought into exercise against this state may not prevail. But if that happy result is attained, it will be an occasion of deep regret, that we are indebted for it to the firmness of our judiciary and the intelligence of our jury, rather than to the discretion of the district attorney or the forbearance of the government whose commission he bears.

I beg leave to assure you that your fears that the government of the United States could not find persons willing to discharge the duties of district attorney upon such conditions as I have had the honor to suggest, seem to me not altogether well-grounded, at least in regard to the district for which Mr. Spencer acts. The bar of that district is numerous and able. I very much doubt whether there is a lawyer within it who would decline so honorable an appointment; nor do I believe that there is another, besides the functionary who now holds it, who, in exercising his high trust, would embarrass himself and the government with a retainer so incongruous and offensive.

It is true, as your excellency supposes, that the people of New York very highly appreciate their rights as an independent state, and are jealous of federal power. Yet I think I can confidently assure you, that their sensitiveness concerning their rights is not so tender that they will insist upon your permitting officers of the United States to justify and defend, in their courts, the outrages of a foreign nation, solely because those officers may happen to be citizens of New York and attorneys in its courts of record.

I have the honor to remain your excellency's obedient servant.

His Excellency John Tyler,
President of the United States.

LETTER IX.

TO THE PRESIDENT OF THE UNITED STATES.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, June 1, 1841.

SIR: I acknowledge the receipt of your letter of the 25th of May, in which, after reviewing the subject you have done me the honor to discuss in former communications, you conclude with the expression of an opinion that a prolongation of the correspondence would be unprofitable and of a desire that it might be regarded as closed.

No one could be more fully convinced than I am of the importance of harmony between the government of the United States and that of this state in regard to questions of deep interest to the latter and affecting the relations of the country with a foreign power. I need not advert to the many and cogent reasons why I must necessarily desire to consider with candor and approve with earnestness the measures and policy adopted by the government of the Union. It was with profound regret I discovered that the correspondence, begun with such a disposition on my part, and having in view only the prevention of an apparent misunderstanding between the government of the United States and this state, had from some cause taken such a course as to exhibit in a measure the reality of the misunderstanding, the appearance of which was deprecated. Such a result was as unlooked for by myself as I am sure it was on your part. Solicitous now that that misunderstanding may be removed, I will not go back to inquire when or how the correspondence received so unfortunate a direction, but will cheerfully acknowledge all the responsibility for it that may be supposed to rest upon me. I take the liberty also to say that in addressing you directly during the known absence of the secretary of state, in consequence of which a previous communication to him on a different subject

had failed to receive the notice which I knew you would have accorded to it, it was far from my desire or expectation to engage you in a correspondence, the conducting which in person I am well aware must have been very inconvenient. I acknowledge myself obliged by the attention manifested in the course you have taken, and I shall be entirely satisfied with a reference of this communication, if it shall be regarded as meriting or requiring any notice, to an appropriate department, as indeed I should have been with a similar disposition of the subject at any stage of the discussion.

I beg leave to say further, that if I had been acting individually I should have deemed it my duty to defer to your opinions and to acquiesce in your decisions as soon as they became known to me. With these explanations, I trust I may be allowed to observe that the representative character in which I stand enjoins me from leaving the subject without first taking care that the positions which I have deemed it my duty to maintain on behalf of this state, be rescued from misapprehension. A similar privilege with what is thus claimed has been already exercised as a right on your part. I trust, however, that in performing a duty which thus seems to remain, I shall not manifest a desire, as I shall endeavor not to furnish occasion, for a reply.

You remark in your last communication that you had heretofore supposed that the right of every man to a fair and impartial trial, to be confronted with his accusers, and to be defended by counsel of his own retaining, admitted of no question, but was deeply engraven on the hearts of the American people; and you are pleased to express surprise that, speaking in the name of the state of New York, I should have entered my dissent from this proposition, which you had hoped would have been regarded as incontestable.

Your known respect for justice, encourages me to believe that you would not conclude me from observing that the general rights of accused persons have not been understood on my part to be among the subjects discussed. It is not within my recollection that the proposition which you have now stated has been before submitted for my consideration, and it is certain that my supposed dissent from it does not appear on the record.

The correspondence has related to the case of Alexander M'Leod, charged under peculiar circumstances with the crime of

murder. *His* particular right under those circumstances, to be defended by a counsellor who holds the office of district-attorney of the United States, may, if you deem it material, be admitted to have been involved. Yet your position on that subject thus most liberally stated, and excluding the peculiar circumstances relied upon on my part, is very different from the proposition you have through misapprehension now stated, and to which you have affixed my dissent. It contains no question concerning the right of that accused person to a fair and impartial trial, and no denial of his right to be confronted with his accusers. In regard to his right to a fair and impartial trial, I beg leave to recall to your recollection, that in my first communication to the government of the United States in relation to his case, it was expressly stated that a just regard for the honor of this state, as well as a due consideration of the importance of the case to the accused, and the possible influence of the result of the proceeding upon the relations existing between this country and Great Britain had seemed to me to require that he should have a fair and impartial trial; and it was announced that, to secure that important object, the chief-justice of the supreme court, who is the highest judicial officer in the state authorized to try criminal cases, and who does not usually preside on such occasions had been required to hold the court, and that no objection would be raised to the removal of the scene of trial beyond the reach of excitement and of every prejudicial influence. The same determination to afford the accused person a fair and impartial trial has been repeatedly avowed, and nothing inconsistent with it will be found in any of my communications.

Again, so far from the prisoner's right to be confronted with his accusers having been challenged, it has been considered a grievance that, while a menace from Great Britain is impending over the government of the United States, a person holding the office of district attorney under the latter government is engaged in an effort to procure the discharge of the prisoner, *without* his being confronted with his accusers. What has been objected to was that the district attorney of the United States was acting in conflict (as was assumed) with the authorities of New York in a proceeding deeply interesting to the state, and sanctioned by the president of the United States. The prisoner's right, under all the peculiar circumstances of the case, to be defended by the

district attorney of the United States because that officer was a counsellor in the courts of this state, has been denied, and this, it is respectfully submitted, is the extent to which I can justly be said to have dissented from the humane and enlightened proposition you have now laid down, and to which as a general rule, with some necessary modifications, I am happy in being able to declare my free assent.

What has been denied, if my position be stated in the form you have preferred to adopt, is the absoluteness of the right of an accused person to be defended by counsel of his own retaining. If the right be absolute, the accused may disarm public justice by retaining the witness, the prosecuting attorney, or even the judge. You have admitted, however, that the rule is not universal; while you maintain that the present case is not to be received among admitted exceptions. The converse has been held on my part, and this is precisely the point at issue. The proposition being thus accurately presented, and my dissent properly understood, I cheerfully concur in waiving further argument on that question.

The correction thus made renders it almost unnecessary for me to advert to the misapprehension with which your communication opens. I am there represented as having requested you to deprive a man, on trial for his life, of his retained counsel, merely because that counsel holds a commission from the government, the nature and character of which in no way conflict with the engagement he has entered into with the person under trial. Certainly no one reading this statement would suppose that a question had been raised at any time, whether, when the circumstances of the case, and the nature and character of the office of district attorney were considered, there was not in fact a conflict between his official duties and character, and his engagement as counsel for the accused. And yet that question has been among the chief points in controversy throughout the whole discussion.

Again, the form you have adopted in presenting the suggestion I had the honor to make, seems to me not altogether liberal. That suggestion was, that the district attorney of the United States was acting in the proceeding in question, in a manner which indicated an apparent conflict between the authorities of the United States and those of this state. The previous retainer of that functionary by the accused was set up, on your part, as

a reason why he ought not to be required to desist from the defence. Even though this might be admitted to be a sufficient reason for declining to deprive the prisoner of his retained counsel, it would by no means follow that there was no other mode of avoiding the conflict deprecated. If it be so certainly wrong to deprive an accused person, on trial for his life, of his retained counsel, because that counsel happens to be the district attorney of the United States, I trust I may nevertheless be permitted now to express my regret that, if that relation of the counsel was known at the time of his appointment, it was not thought important, in view of the peculiar circumstances of the case, to inquire whether it was indispensably necessary to assign the duties of district attorney to a person lying under such an engagement.

It seems to be regarded by you as a light consideration that an officer holding a commission from the United States may be paid by the government of Great Britain for challenging the jurisdiction of the courts of this state in a cause instituted for the purpose of vindicating the lives and property of its citizens, with the sanction of the president; and when a war between Great Britain and the United States is supposed to depend upon the exercise of the jurisdiction thus challenged. I can only excuse the error which I have committed in dwelling upon a circumstance which you regard as so unimportant, by pleading the prejudice supposed to be sustained by the history of our own as well as of other countries, and even by higher authority, which inculcates the danger of intrusting a cause to one who lies under obligations to an adversary.

You are pleased to observe that misapprehending the tenor of your communication, and detaching a sentence from its connection, I had made an occasion to ascribe to you an indifference to the rights of the state of New York which nothing that has occurred can justify. I acknowledge most gratefully the kindness of the succeeding remark, that upon further reflection, and with more extended information, I would have been among the last to have done you such injustice.

I owe it to myself to state, that when writing the communication referred to, it did not occur to me that the effect of the sentence to which you have alluded was qualified by the context. I will not recur to the correspondence which has passed, either to

inquire whether it was not my duty to act upon such information as I possessed, or to ascertain whether the error into which it appears I have fallen might not be defended or excused, but will freely admit that injustice was done in supposing you to have felt any less interest in the rights of the state of New York, than that which you have now carefully defined. As this is a subject, however, of deep interest not only on account of its bearing upon the matter out of which this correspondence has arisen, but also because it involves the mutual rights and obligations of this state, and the government of the United States, I shall deem it my duty to state the positions of both parties accurately, and shall then be content to leave them without discussion.

Your positions are stated by you as follows: "The attack on the Caroline, when viewed as an act of public force, committed by the British government within the territory of the United States, is undoubtedly a matter in which the government of the United States is bound to take an interest, and to which, I trust, neither my predecessor nor myself have shown any degree of inattention. But when it is viewed as divested of its character as a public transaction, and when those concerned in it are regarded merely as individuals committing crimes against the laws of New York, then certainly the case requires nothing to be done by this government as auxiliary to the power of that state. Nor can this government have more to do with that trial than with a trial for any other offence against the laws of the state, unless, indeed, it find itself called upon, for the protection of some interest of the United States, or by its high duty of preserving the peace of the country, and of superintending its foreign relations, to take care, by the exercise of its acknowledged powers, that such interest be guarded, or that no just ground of complaint be furnished to other nations. It was in this sense, and in this only, that I spoke of M'Leod's trial as one in which the government of the United States had no interest, and I repeat my regret that your excellency should have thought there was ground for ascribing to me any other meaning." Again, you declare that you concur with me in opinion, that "the destruction of the Caroline is a question in which every state of this Union is interested equally." You observe, also, that "the interests of New York are merged in those of the United States;" that "the question is no longer local, but national." And you

add: "While I shall at all times be pleased to receive suggestions from your excellency in regard to it, and shall give to them all the consideration to which they are entitled, as emanating from the chief-magistrate of an independent state, yet I shall be equally prepared to receive, and maturely to consider, similar suggestions from the governor of any other state."

These are the views of the government of the United States, concerning its interest in the subject of the attack upon the Caroline. On my part, I declare most cheerfully my concurrence with them, so far as they relate to the attack upon the Caroline, viewed as an act of *public force* committed by the British government within the territory of the United States, and directly cognisable by the government of the United States, and a national question. I will take leave also to say, that I should be especially grieved if my communications had anywhere manifested the disposition, indirectly, and I must be allowed to say, prematurely censured, to obtrude advice in regard to this branch of the subject, or to claim any especial attention from you beyond what might be due to the executive of any other state, or even any other citizen of any one of the United States.

In regard to the same subject viewed in the aspect presented by the prosecution by this state against Alexander M'Leod, as a participator in the attack upon the Caroline, and the murder of a citizen of this state, the following positions are held on my part. The offenders in the transaction referred to, if they had been arrested at the time, might unquestionably have been brought to justice by the judicial authorities of this state, and the prisoner's subsequent voluntary entrance within that territory places him in the same situation. There is no principle of international law, or of reason or justice, which entitles such offenders to impunity before the legal tribunals, when coming voluntarily within their independent and undoubted jurisdiction, because they acted in obedience to their superior authorities, or because their acts have become the subject of diplomatic discussion between the two governments. The avowal or justification of the outrage by the British authorities, so far from in any way entitling the offender or his government to a discontinuance of the prosecution commenced by this state, might itself be an additional ground of complaint. The application of the government of the Union to that of Great Britain, for the redress of an

outrage upon the peace, dignity, and rights of the United States, can not deprive the state of New York of her undoubted right of protecting, through the exercise of her judicial power, the property and lives of her citizens.

The government of the United States heretofore voluntarily assumed these positions in behalf of the state of New York, and made them known to Great Britain, before either an avowal of the attack upon the Caroline, or a formal demand for the release of M'Leod without trial, was made by the British government, and when both were well anticipated. The government of the United States made known to the authorities of the state of New York the grounds it had thus assumed in her behalf, and received their assent. Thus the government of the United States became pledged to maintain and guaranty, at all hazards and in every event, not only the prosecution it had so solemnly sanctioned in the face of Great Britain and before the world, but also all the principles before defined as those which are maintained by this department.

The avowal by the British government and the peremptory demand for the release of M'Leod, which were anticipated, have now been made, but they can not affect the rights of this state, or the obligations of the United States. The demand for the release of M'Leod involves a discontinuance of the proceeding instituted by this state; and a compliance with the demand can not be made without abandoning the grounds already put in issue between the government of the United States and that of Great Britain. Notwithstanding the issue was chosen and tendered by itself, the government of the United States now declares that it has no interest in the prosecution carried on by the state of New York, except in contingencies which have not happened, and which it is not alleged are expected to occur.

It is held on my part, that the state of New York can not, without dishonor, especially under what must be construed as a menace by Great Britain, retire from the prosecution by which she is vindicating the property and lives of her citizens. It is most respectfully held, also, that the government of the United States can not, consistently with its solemn sanction and pledge, disavow an interest in that proceeding, or withhold from this state countenance and support. It is not neutrality on the part of the government of the United States, in regard to the proceed

ing, that has been invoked, as you have assumed. It is the continuance of favor, the redemption of a pledge, the fulfilment of a guaranty. And it was because the action of the district-attorney of the United States to embarrass, thwart, and defeat, in an extraordinary manner, the prosecution instituted by this state, seemed inconsistent, not merely with the favor of the federal government thus relied upon, but even with neutrality itself, that the subject was respectfully brought to the notice of the president of the United States.

It is felt that it was unjust on the part of the government of the United States, when the representation thus rendered necessary was respectfully made, to answer by pleading the rights of attorneys and the powers conferred by their licenses, by refining upon the obligations of retainers and the privileges of accused persons, and by disavowing all obligation, duty, interest, or concern, in regard to the proceeding in question, except in remote and unlooked-for contingencies.

I am asked what right of this state has been abandoned by the government of the United States, or in any way put at hazard, and whether the rights of her judiciary have been in any way interfered with by that government. Although at the same time invited not to reply to questions so pertinent, and under which silence would be so conclusive of affirmation, I must nevertheless be permitted most respectfully to answer, that the local crime for which this state prosecutes, and the public aggression for which the United States demand redress, are identical. The same facts and circumstances constituted both. The district-attorney of the United States has heretofore been required, and it is always within his province, to ascertain those facts and circumstances for the use of the government in support of its demand for redress; and it is altogether inconsistent with his duty to deny their existence or palliate their flagrancy. If there was no assault upon the Caroline, and no murder of Durfee, to be vindicated by the state of New York, then there has been no outrage upon the peace, dignity, and rights of the United States to be redressed by their government. The defence of the prisoner in the former case, involves a denial of all the grounds upon which the latter can be maintained. The district-attorney of the United States, by his retainer in the former, became bound to maintain not only that his client did not participate in the aggression for

which the government of the United States demands satisfaction, but also that no such transaction has ever taken place; that if it did take place, he is not amenable, although the government of the United States has declared he is so; that if he were responsible, still the courts of this state have not the jurisdiction over him which the president of the United States has solemnly affirmed in their behalf; and finally, that the transaction was lawful, just, and right, notwithstanding the declaration of the government of the Union to the contrary. All these positions have been already maintained by the district-attorney, and they are so strikingly incongruous with his official relations, and with the obligations and duties of the government of the United States, that that government deems it by no means unimportant to affirm and reiterate that he is acting without its authority or direction, although not without its permission. The same functionary informs the court, moreover, with an asseveration of full knowledge of the views and wishes of the government of the United States, but disclaiming its direct authority for the communication, that that government is looking anxiously to that tribunal for a discharge of the prisoner, without confronting him with his accusers and without a trial; and he enforces his appeal for so dishonorable a decision, by declaring — but whether upon the authority of the British government, or from his knowledge of the secrets of his own, does not appear — that if the court shall exercise its undoubted jurisdiction, our frontiers will be lined with British bayonets, and our coasts with the navies of the proud adversary who has justified his client's offence, and made his cause her own.

The president of the United States leaves me to suppose that he sees in all this, nothing calling for his interposition, and, moreover, unhappily, expressly disclaims all interest in the judicial vindication of the lives and property of the citizens of this state, except it shall hereafter become necessary for purposes foreign to the present state of the case, and he even dwells upon supposed advantages to be derived from the discharge of the accused without a trial, upon the ground of the assumption of his offence by the government of Great Britain.

No right of this state may be lost. The extraordinary proceedings I have described may not have the effect to which they so manifestly tend; I trust it will be so. But it is obvious that the

judicial vindication of the rights of our citizens has been put at hazard. If it shall happen, as you have speculated, that the prisoner shall be discharged, without a trial, it will then be remembered that Great Britain had peremptorily demanded the prisoner's release, and that the government of the United States was represented to the court by a person, standing in an intimate relation with the government and enjoying its confidence, as earnestly desiring such a result; and the people of this state will be left to the painful consideration, how far a conclusion so gratifying to the offending government and so humiliating to themselves, was produced by such honest judicial convictions as you rely upon, and how far it was induced by the circumstances against which I have felt myself constrained to present my remonstrance. I earnestly hope, that in such an event, the confidence of the people of this state in their judiciary may be found as salutary in healing their discontents as is now anticipated by the government of the United States.

I take leave of the subject with the assurance, that none will be more sincerely gratified than myself, if the succeeding events shall prove that your views concerning it are, as from habitual deference I can cheerfully admit they may be, as much more just than my own, as the exalted position from which they have been taken is more favorable than the place I occupy, to an examination of the whole ground.

I have the honor to remain, with the highest respect, your obedient servant.

His Excellency John Tyler,
President of the United States.

LETTER X.

TO THE SECRETARY OF STATE OF THE UNITED STATES.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, September 23, 1841.

SIR: I was at Auburn on the 30th of August, and received there your communication of the 24th of that month. Two other copies of the same letter have since been received; one of which was delivered to me by Major-General Scott, and the other was found at Utica.

By that communication I am informed that it has been represented to you by her Britannic majesty's minister, Mr. Fox, that he had received information that a movement relating to Alexander M'Leod was contemplated in this state by persons designated "patriots," and that it had been their intention to assassinate him on his being released from confinement; that the persons engaged had subsequently resolved to hasten their designs so as to anticipate any interference by the United States government; that to accomplish their object, they had determined to force the state arsenals and remove several pieces of artillery; that this had already been done, and that the "patriots" had in their possession seven field-pieces, which were secreted in canal-boats; that a person named Rolph, who was their agent in New York, had sent from that city a supply of ammunition, which had been conveyed to the vicinity of Utica; that it was now the intention of the conspirators to assemble at Whitestown (the place where M'Leod is confined) and to surround the jail and demand his delivery from the keeper; that, in case of a refusal or resistance, they would display, and threaten to effect their entrance by means of, the artillery; that, having got M'Leod into their power, they intended instantly to "lynch" him; that the strongest detachment to be engaged in the enterprise would arrive at Whitestown concealed in canal-boats, and the other division would assemble in the woods near Utica; that "the notorious Lett was

openly and actively engaged in furthering the designs of his infamous associates; that he had been seen at noonday on Tuesday last in the public streets of Buffalo, and that no efforts were made on the part of the state officers to arrest him."

You observe in your communication that "it is to be hoped that the dangers thus pointed out in the communication of her Britannic majesty's minister are not real, or at least that they are exaggerated; yet that some circumstances of public notoriety give too much reason to believe that illegal designs of some sort are on foot." You assure me of the president's confidence that the government of this state will take measures "to secure the person of Alexander M'Leod, now a prisoner under the laws of this state, against violence." And you very truly remark, that any such proceeding as is supposed by her Britannic majesty's minister to be contemplated, while it would be an outrage upon all law and justice, would be an occurrence very likely to affect most seriously the peace of the country.

Immediately upon receiving this communication, I proceeded to the vicinity of Whitesboro' (called also Whitestown), with a view to adopt such measures as the exigency might require.

In my letter of the 26th of July last, I informed the president that the motion of Alexander M'Leod to be discharged without a trial, has been denied by the supreme court; that his application for a change of venue had been granted, and that the cause would be tried at a circuit court, to be held in the county of Oneida on the 27th day of the present month of September. Upon this decision being made, the prisoner was, by order of the court, committed to the custody of the sheriff of Oneida county, and has since been confined in the jail of that county at Whitesboro', distant four miles from the city of Utica.

On the 10th day of August last, I apprised the president that two field-pieces, the property of the people of this state, had been abstracted in a very secret manner from their depositories in Cayuga county; that I had made extraordinary efforts to ascertain the place of their concealment and to discover the offenders, but as yet without success. I mentioned further, in the same communication, a suspicion that the pieces of ordnance thus removed had been taken with a view to some demonstration upon the Canadian frontier; but I stated that I had no knowledge of any grounds for the suspicion, except the similarity of the movement

to what had happened on the frontier of this state a few years since. I further informed the president, that I had taken measures to protect the military property of the state; that I had given notice of the transaction which had occurred to Colonel Bankhead, who then commanded a regiment of the United States artillery at Buffalo, and had requested him to inform me whether any indications of a renewal of the disturbances on the frontier had manifested themselves under his observation. The result of very diligent inquiries is, that instead of there being in the possession of the "patriots" seven field-pieces taken from the state-arsenals, it is quite certain that they have only three pieces. One of these was taken from a gun-house at Auburn, in the county of Cayuga; another, belonging to the state, was removed from an open place in the same county, where it had lain a long time exposed; and the third, which was similarly exposed, did not belong to the state, and was not taken from any of its depositories.

The commissary-general of this state, in pursuance of my directions, has been engaged, ever since the transaction became known to me, in efforts to find the stolen ordnance, and to discover the persons by whom it was removed. Rewards have been offered for a restoration of the property and arrest of the offenders. Orders have been issued to all the commandants of regiments of artillery and keepers of arsenals within the state, directing them to guard the public arms and ordnance with strict care. The collectors of tolls and the district attorneys of the several counties traversed by the canals have been required, and the marshal of the United States for the northern district has been requested, to use all necessary efforts to bring the offenders to punishment, and to guard against such depredations in future. I have occasion to regret that I am deprived of the co-operation of the district attorney of the United States for the district where these alarms have arisen. His engagement as counsel for M'Leod placed it out of my power to communicate with him upon the subject.

Colonel Crain, of the United States army, recently informed me, that he had reason to believe there was a depository of arms and ordnance kept by the "patriots" at Sandusky or Cleveland, and he suggested that the pieces of cannon stolen from this state might have been conveyed to such depository. Major-General

Scott stated to me, that he had information which led him to concur in the opinion expressed by Colonel Crain. Major-General Scott intends, as you are aware, to visit Cleveland and Sandusky, and he has engaged to give me information concerning the guns taken from this state, if that supposition should prove to be true.

I have addressed his excellency the governor of Ohio, requesting him to ascertain and inform me whether such a depository has been established in Ohio.

Upon inquiry of the sheriff and first judge of Oneida county, I have been informed by them that some unknown persons, with arms, have been seen lurking about Whitesboro', under circumstances which induced the public officers to believe it possible that there might be a design to endanger the person of M'Leod.

It is not possible, in my judgment, that such a plot as Mr. Fox mentions can be carried into effect in the county of Oneida. Oneida is one of the most populous and enlightened counties in the state, and any attempt to break the public peace, or to produce popular disturbance there, would be instantly put down by the citizens.

It is true that Benjamin Lett is still at large. I was informed, moreover, by the district-attorney of Erie county, that that notorious offender had recently been in the city of Buffalo, but that he was unknown at the time to the police. It is altogether untrue, if I am correctly informed, that any of the officers of the state have manifested any want of energy in bringing him to punishment, unless it be the sheriff of Oswego county, who was responsible for the delivery of the prisoner at the stateprison. Lett is a British subject. He escaped from Canada, after having committed some atrocious crimes there. The Canadian authorities offered rewards, amounting to four thousand dollars, for his arrest, as I am informed. He was subsequently convicted in Oswego county in this state, of arson, committed in a fiend-like attempt to burn and destroy a steamboat filled with human beings, and upon that conviction he was sentenced to be imprisoned in the stateprison at Auburn for seven years. On his way, under the care of the sheriff of Oswego county, to the stateprison, Lett made his escape, at the imminent peril of his life, by leaping from a railroad car while it was under full motion. I immediately issued a proclamation, designed to aid the sheriff in his efforts to

recapture the prisoner, offering a reward which was considered sufficient to secure his arrest, and I despatched special agents in pursuit of the prisoner; but he eluded pursuit, and it has been understood that he has lurking places on the frontier, where he is supported and abetted by confederates, in contempt of the laws of this state and those of his own country.

Colonel Bankhead of the United States army, recently stationed at Buffalo, informed me last October, that he had ascertained the offender's place of retreat, and wanted only my authority to arrest him; this was promptly given. The colonel, however, informed me some few weeks since that Lett was aware of the pursuit, and that it had not been possible to arrest him.

I some time since gave the police of Rochester and Buffalo to understand that the sum originally offered for the arrest of Lett would be doubled, but public notice to that effect was not given, because I feared its effect might be to drive the fugitive out of the country. It remains for me to state for the information of the president, what measures have been adopted since the receipt of your communication.

I have instructed the sheriff of Oneida county to employ a guard of thirty persons to watch and protect the jail until the case of M'Leod is decided. I have directed notice to be given to the proper military officers of Oneida county, that they be in readiness to call out any force necessary to preserve the public peace and secure the safety of the prisoner.

I have directed that a volunteer artillery company of citizens of Oneida county, to the number of one hundred men, be immediately enlisted, organized, armed, and equipped, supplied with ammunition and held in readiness. I have, by proclamation, increased the reward offered for the recapture of Lett, to the sum of nine hundred dollars, which, together, with the sum of one hundred dollars heretofore offered by the sheriff of Oswego county, will make the sum of one thousand dollars, which will be paid for the arrest of the offender.

I have employed a confidential agent to traverse the canals, and obtain information of the purposes and plans of those who may be engaged in any such design as that mentioned in your communication.

I have called the sheriff of Oswego county to account for the escape of Lett, and for his continuing at large.

Copies of various official papers relating to the subject of your communication are herewith transmitted.

I trust the president will find in the proceedings taken by this department, sufficient grounds to justify him in assuring her Britannic majesty's government, that the state of New York is as jealously watching over the personal safety of Alexander M'Leod, while he is a prisoner in her custody, as she has firmly insisted that he shall answer at her tribunals, for the flagrant violation of her laws, of which he stands accused. And I beg leave to assure the president, that while this state is not to be deterred by any menace which Great Britain may offer, from judicially vindicating the lives and property of her citizens, she is at the same time most careful to prevent any violation of the rights of any subject of the British government.

I should not perform my whole duty if I did not state further, that the feelings of irritation which have heretofore existed upon the frontier have not altogether subsided. That if I am correctly informed, the challenge of the jurisdiction of this state over Alexander M'Leod made by the British government, has increased that irritation; and that the building two armed vessels at Chippewa, to cruise upon the lakes, has an effect to exasperate many people in this state, who regard with very natural apprehensions the military preparations of our neighbors, in a time when there are so many exaggerated rumors of diplomatic collision between this country and Great Britain.

I am obliged to express my concurrence in the belief that movements of some sort to disturb the peace between this country and the British provinces are in contemplation. I am of opinion, however, notwithstanding the communication of her Britannic majesty's minister, that the cannon taken from this state, have a destination toward the lakes, and a contest with the British steamers building there, rather than a bombardment of the jail of Oneida county.

But I confess that my information like that possessed by the general government is quite inconclusive, and I shall not fail to communicate all further information which I shall hereafter be able to acquire.

I have the honor to be, with the highest respect, your obedient servant.

THE HONORABLE DANIEL WEBSTER, *Secretary of State.*

LETTER XI.

INSTRUCTIONS TO THE SHERIFF OF ONEIDA COUNTY.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, September 24, 1841.

SIR: There is much reason to apprehend that the country would be involved in war if any injury should befall Alexander M'Leod while he remains in the custody of the law. The state of New York could be neither justified nor excused if any violence should reach him. Important as it is that the state shall vindicate its dignity, by subjecting him to a trial for the offence with which he is charged, the honor of New York, and even that of the United States, is more deeply concerned in protecting him against danger until that vindication be accomplished. You are aware of the solicitude of this department on that subject. You are aware that the same solicitude is expressed by the president, and, indeed, that it pervades the American people. I have the highest pleasure in acknowledging, that you have on all proper occasions expressed, and in every proper manner manifested, a deep sense of the responsibilities which, under such extraordinary circumstances, rest upon you. It is my duty now to state to you, that besides the communications of which you have heretofore been informed, very frequent letters have been received by the president, giving him notice of designs on the part of evil-disposed persons to rescue M'Leod and assassinate him.

Although I remain of the opinion before expressed to you, that such apprehensions are without sufficient cause, yet it is certainly safer to err on the side of prudence, and no proper precaution can be omitted consistently with the respect due from the authorities of this state to those of the Union. I deem it suitable therefore to recommend that the constabulary force assigned to attend the court should be double or trebl · that usually called into requisi-

tion on such occasions. You have a surplus of arms and ammunition, after supplying the guard heretofore established. Let arrangements be made for placing those arms in the hands of your deputies and the constables. Should any disturbance of the peace take place, or be reasonably apprehended, you will, under the direction of the court, call out any portion of the militia of Oneida county that you may believe necessary; and to enable you to do so, the adjutant-general will be in attendance at or near Utica during the trial, and ready to render you effective assistance. Major-General Scott, commanding the army of the United States, has directed the company of regular troops now stationed at Rome to be held in readiness to support you if their services should be deemed necessary. Brigadier-General Wool will be near you throughout the trial, and will, whenever called upon, give you his advice, and his assistance if necessary. I leave it to your own prudence and discretion to determine how far you will avail yourself of the aid thus placed at your command. You will, however, allow me to remark, that the spectacle in this country of a court attended by an armed force would be a scene to be much regretted. You will, therefore, be exceedingly careful to make either no military array, or the least that shall be consistent with the entire security of your prisoner and the preservation of public order. For the honor of the state and the country, it is to be desired that his trial, which will have all the importance and many of the features of a high state trial, may, if possible, be conducted with the simplicity which belongs to our institutions.

If the prisoner shall be convicted, you will be very careful to take such measures as shall prevent his escape or rescue. If an acquittal takes place, you will tender to him a safe conduct through the state, requiring him to proceed with as little delay as possible, and upon that route upon which it shall seem to you that he will be least exposed to lawless violence. You will call to your aid, in performing that duty, the marshal of the northern district, who will officially attend you. You will also avail yourself of the aid of so many public officers and of such a guard, either civil or military, and drawn either from the militia or the regular troops before mentioned, as you may have reason to believe will be required. With such aid, you will conduct the prisoner in safety to the frontier. If he refuse to leave the state

or shall decline the protection thus tendered, your peculiar responsibilities and those of the state, so far as they shall have arisen from his detention, will have been discharged. I recommend that you resort, in every event, to the court for its sanction of your proceedings, and that you advise freely with the attorney-general, General Wool, the adjutant-general, and the marshal of the northern district.

You will not hesitate to send communications to me by express if any exigency should occur which shall seem to render such despatch necessary.

I am, very respectfully, your obedient servant.

DAVID MOULTON, ESQ.,
Sheriff of Oneida County.

LETTER XII.

TO THE ATTORNEY-GENERAL OF THE UNITED STATES.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, May 31, 1841.

MY DEAR SIR: I welcome the news of your return to Washington. If it is regarded worthy your consideration, you will learn that during your absence a correspondence, not more unpleasant than unprofitable, has taken place between the president and myself concerning the affair of Alexander M'Leod.

Your memory will retain the views presented to you when here, concerning the course on that subject deemed proper by me, and the fact that it was requested that, if those views were not approved at Washington, a further consultation might be had with me before definite action was adopted. You will, I trust, remember that I distinctly advised against any extraordinary proceedings being taken, or with the consent of the government permitted, to secure the prisoner's release without a trial before a jury, and that I, with all my counsellors, especially advised against the appointment of his retained counsel as district attorney expressly on the ground of its incongruity, and of

the injurious and unseemly aspect it would present. From that time no communication, formal or otherwise, was received here until very recently; and, in the meantime, the course of the government was left to be learned from rumor, until the subject of a supposed collusion between the government at Washington and that of this state, to effect the prisoner's discharge without a trial, became a point of legislative inquiry and a charge of the opposition press. While satisfying the legislature and the public on that subject, I in good faith addressed a brief letter to the president concerning Mr. Spencer's appearing as counsel, to which I received a kind reply. From that reply I was induced to believe that the subject was viewed as having less importance at Washington than, considering all its bearings upon so delicate a question, I thought it really had, and that, at all events, my acquiescence in the course adopted would not be proper and safe. I therefore addressed a second letter to the president, in the same kind and confiding spirit as the former. An answer from the president, in any general form, overruling my opinions, although I should not have been convinced by it, would have ended the correspondence, and, leaving both parties to their proper responsibility, would have avoided all unkindness.

The president, however, replied at length in a spirit that seemed to me unkind, and in a manner that required the firmest adherence to my positions, and the most vigorous defence of them I could make. I replied accordingly, and his rejoinder is before me, in which, as I cheerfully admit was to be expected, he preserved the same disposition and tone as before. My further reply will go with this letter.

Although I feel that I am injured in this matter in the house of my friends, I care nothing for that, but I regret that I am misunderstood. I can not but believe that the confusion into which things necessarily fell for a time at Washington, in consequence of the death of General Harrison, and your absence from Washington in a season when your explanations would have been useful, have contributed to this result. My object in addressing you is to call your attention to the subject, in order that you may do whatever may seem to you to be useful. I do not ask your interposition. I have no personal reason for desiring it. I do not ask you even to acknowledge this communication. I should deem it improper for you, as a member of the

cabinet, to write to me on the subject except in support of the president; but I think it well, in this informal way, to suggest that the talent and wit of the administration might be more profitably exercised in some other manner than in an unavailing effort to drive me from a course which, in my poor judgment, is required, not less by patriotism and the honor of this state than by devotion to the administration itself.

I think that, during your visit here, you acquired information enough to know, what President Tyler can not know, that in all that has passed, I have been frank and consistent. The course pursued in regard to the same question at Washington has not been so. If you think it well to acquaint the president with what you know concerning the subject, I shall be personally obliged. But, I desire that it may be understood, it is done only as a matter of some public importance, and by no means in such a manner as to induce an opinion that I would either solicit notice of a personal grief, or carry it into general account.

With very sincere respect and esteem, your friend and obedient servant.

THE HONORABLE JOHN J. CRITTENDEN.

MISCELLANEOUS.

APPOINTMENTS TO OFFICE.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, January 7, 1839.

DEAR SIR: I have received your letter of the 3d instant, in relation to the nomination of a suitable person for inspector of beef and pork, in Clinton county. I hasten to answer it, because I observe that it promises me the aid of a county convention in making that nomination.

As such a convention must necessarily be of a partisan character, you will permit me to say, that with the views I now entertain of my duties and responsibilities as a magistrate, acting for the benefit of the whole people, I could not recognise the recommendation of such a body, as entitled to any decisive weight. Any other course would be only to surrender to county conventions the power confided to me; and there can be no sufficient motive for such a dereliction of duty. I pray that I may not be misunderstood on this subject. I seek and am willing to receive information and advice from any and all parties, and any and all men, in relation to any question upon which I shall be called to act. But I do not deem it important or desirable that the executive department should be released from any of the responsibilities devolved upon it by the constitution and laws.

I am, very respectfully, your obedient servant.

THOMAS D. GILSON, ESQ.,
Plattsburgh.

COLORED SEAMEN IN SOUTH CAROLINA.

State of New York, Executive Department,
Albany, January 29, 1839.

Dear Sir: I have received your letter of the 26th instant, and the newspaper therein mentioned, containing an account of the case of Prince Maticé. You inquire whether in any similar case which may occur hereafter, it would be in my power as governor to afford relief.

While it would certainly be right that I should represent the case to the executive of the state in which the emergency should arise, I am not aware that by the constitution and laws I have any power to compel the release of the party imprisoned. I am not aware that there could be any objection to the governor's submitting such a case, when it occurs, to the legislature of this state, and I certainly agree with you, that when the party oppressed is unable to bear the expense of legal proceedings to recover his liberty, the state ought to assume the burden.

However inconvenient and expensive it may be to test the constitutionality of the laws of sister-states in such cases, I know of no other remedy unless it be by an act of Congress. Proceedings at law are always slow and often expensive. But they are, nevertheless, the true and rightful remedies, and in the end more safe and certain, than any other form of redress.

Your obedient servant.

Charles Marriott, Esq.,
Hudson.

APPOINTMENTS TO OFFICE.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, January 30, 1839.

DEAR SIR: I acknowledge the receipt of your letter of the 25th instant, in which you mention that you hold the several offices of *Master in Chancery*, *Examiner in Chancery*, and *Supreme Court Commissioner*, and propose to retain the two former and relinquish the latter, or vice versa, and request my opinion on this proposition.

I am obliged to say in answer thereto, that it would be inconsistent with the rules I have prescribed to myself, in the exercise of my official duties, to advise you in the premises.

Far from being desirous that my power shall be increased, by the occurrence of vacancies in the public offices, and unwilling by previous stipulations to embarrass myself as to the manner in which they shall be filled when vacancies shall occur, I most cheerfully leave this, and all similar matter, to the natural and ordinary course of events.

I am, very respectfully, your obedient servant.

GODFREY J. GROSVENOR, ESQ.,
Postmaster.

CLERICAL VISITATION OF PRISONERS.

State of New York, Executive Department,
Albany, June 29, 1839.

Sir: The Reverend Michael Gilbride, a Roman Catholic clergyman residing at Carthage, represented to me that he is pastor of a mission in Jefferson county, embracing Lowville and Martinsburgh, in the county of Lewis; that Lawrence M'Carthy, a prisoner in the jail at Martinsburgh, who was recently convicted of the murder of Asahel Alford, and was sentenced to suffer death on the first day of August next, is a member of the Roman Catholic church; that the said Gilbride received information that the prisoner desired his spiritual aid; that he thereupon proceeded to Martinsburg for the purpose of administering the rites of his religion to the said prisoner; and that he was informed by the jailer, Mr. Daniel S. Bailey, that he was instructed not to admit any person to the prisoner, unless the said jailer should be present and hear the conversation between him and the prisoner. Mr. Gilbride further states, that he consulted the district attorney of Lewis county, to ascertain whether he could obtain admission to the prisoner by making personal application to you, and was informed by the district attorney that you had conversed with him on the subject, and had said that you considered yourself bound by the statute not to admit any person to the prisoner alone, and that consequently his application must be denied. Upon this representation, Mr. Gilbride asks my interposition in the premises.

Where the constitution and laws give to the executive no control over other functionaries, it would be disrespectful to them, and disorganizing to the administration of justice were I to assume authority. But the general duty, "to take care that the laws are faithfully executed," undoubtedly authorizes me to advise other executive officers upon any question which may arise touching the manner of discharging their duties. I deem it,

therefore, not improper to express respectfully to you my view on the subject thus brought before me.

In the first place, I am not satisfied that you have refused compliance with Mr. Gilbride's request. The conduct of the jailer, and his refusal to admit Mr. Gilbride unless attended by himself, were clearly right. It is a prudent precaution against the prisoner's escape, to provide generally that no person shall visit him except in the presence of an officer, and the jailer might well adhere to this line of duty until otherwise expressly directed by you. Mr. Gilbride ought not to have been deterred by the information given him by the district attorney from making his application to you personally. He has, therefore, no right to presume that a personal application to you would have have been denied.

But the subject is one of grave importance, and the time of a man lying under sentence of death is inestimably precious. I have therefore thought it proper, under the circumstances of the case, to express my opinion upon the reasonableness of the request itself.

It is the manifest duty of the sheriff to keep secure the persons of individuals lying under conviction and sentence of death. It is equally clear that a proper precaution should be used, to forbid access to, or conversation with them, except in the presence of an officer of justice. The provision of law which bears on this subject is contained in the 11th section of Article I., Title I., Chapter 3, Part 4, of the Revised Statutes, vol. 3, page 633:—

"§ 11. Prisoners detained for trial may converse with their counsel, and such other persons as the keeper, in his discretion, may allow; prisoners under sentence shall not be permitted to hold any conversation with any person, except the keepers or inspectors of the prison, unless in the presence of a keeper or inspector."

It is true that so much of this section as relates to "prisoners under sentence" is broad enough to embrace all classes of offenders who have been convicted and sentenced to punishment, whether that punishment be death, imprisonment in the state-prison, or imprisonment in the county jail. The policy of the law doubtless is, chiefly, to guard against the escape and rescue of prisoners. So far as concerns those who are confined under sentences of imprisonment in the county-jail, it may have the further object of regulation and even severity of punishment. But it can have no such object so far as prisoners detained under sentence of death are concerned.

Indeed, an examination of the first section of the article above quoted will show that the legislature had probably no reference in that article to this latter class of prisoners. The first section is as follows, page 632:—

"SECTION I. The common jails in the several counties of this state shall be kept by the sheriffs of the counties in which they are respectively situated, and shall be used as prisons—

"1. For the detention of persons duly committed in order to secure their attendance as witness in any criminal case;

"2. For the detention of persons charged with crime, and committed for trial;

"3. For the confinement of persons duly committed for any contempt; and

"4. For the confinement of persons sentenced to imprisonment therein, upon conviction for any offence."

Persons imprisoned under sentence of death and awaiting execution are indeed included among those for whose custody the article makes provision, but their imprisonment is incidental, and it may well be supposed that is not regarded as a part of their punishment. From this view of the statute, I think it manifest that the spirit of the law does not apply to the prisoner confined in the county-jail under sentence of death, or of imprisonment in the stateprison, and awaiting execution or removal.

The condition of a human being under sentence of death is undoubtedly most fearful and unhappy. Our laws, content with the atonement of the prisoner's death, do not require or contemplate the addition of any circumstances of terror or unnecessary privation. They require duress only because it is necessary, and they enforce it only in such manner as is necessary to prevent the prisoner's escape or rescue. Humanity dictates that the prisoner's condition should be made as comfortable and cheerful as it can be consistently with this purpose. The chief consolation of the prisoner is derived from the visits of friends and humane individuals, and experience has shown, that of such visitation, the most consoling and most effectual in producing penitence and hope is that of ministers of religion. Hence it is that the duty of visitation is enjoined by the Christian religion itself. It is declared to be one of the grounds of acceptance by our final Judge—"I was in prison, and ye came unto me." So far as my knowledge goes, no Christian sect has failed to enjoin the performance of this duty of visitation upon its ministers, while some of them, as the Catholics and Episcopalians, have rituals prepared for such occasions. What Christianity enjoins, our laws and customs both tolerate and encourage. From time immemo-

rial, the judge has concluded the solemn sentence of death pronounced upon the prisoner, with the prayer, "And may the Lord have mercy upon your soul." A custom as old and as uniform has sanctioned the visits of ministers of the gospel to prepare the prisoner for that "mercy" which the judge implores. Our statutes authorize the attendance of ministers at the execution; but we all know that their offices, however important, are then less desired and less important to the unfortunate convict than during the season of imprisonment which intervenes before the execution. Humanity, as well as Christianity, would condemn the sheriff or jailer who would refuse to the ministers of the gospel admittance to the convict's cell. But it may be answered, that this privilege is not denied in the present case; that it is only insisted that it must be enjoyed in the presence of an officer who will see that it is not abused or perverted to defeat the cause of justice. And it will be asked: "Is not the precaution reasonable?" I answer that it is reasonable where the religious faith of the convict and of the ministry he prefers does not object to such publicity. But it certainly is consistent with the spirit of toleration which pervades our free institutions, that the convict should enjoy the visits of ministers of his own faith, whatever that faith may be, whether Catholic or Protestant. It is well understood to be an article of the Catholic religion, that confession before death in order to be effectual to obtain the Divine pardon ought to be made to a priest, and that that confession must be made without witness. It seems to me that the same principle of toleration requires that the Catholics should be allowed their privilege. According to his faith, the solaces of such visitation are vain and a mockery, if they are not ministered by the functionary and in the manner which that faith prescribes. To refuse compliance with the peculiar manner which his conscience approves, is to deny the solace altogether. By the constitution, he is entitled to as free privileges in regard to creed as the Protestant, who believes that confession should be made in another form. As a Protestant, I should execrate the tyranny which in a Catholic country would deny to one of my countrymen, in a similar situation, the consolation of religion after the form approved by his own conscience; and, as an American, I should blush for the bigotry which would, upon any plea, deny to the Roman Catholic equal indulgence. It is not a sufficient reason

to say that the priest *may* abuse his privilege. Members of the society of Friends are permitted by law to give evidence upon their simple affirmation without an oath. It is no valid objection to that law to say that Friends, like other men, may affirm falsely.

So far as I have information, the rite of private confession has never been denied to Catholics in this country, and I should be unwilling to construe the section I have quoted as requiring such a denial. I have no belief that such a result was contemplated or foreseen by the legislature. The reason of the law does not apply, and I doubt not that the framer of the statute would be shocked by such an application of it. I do not hesitate, therefore, to say that "the presence of a keeper or inspector" here referred to may and ought to be dispensed with, and that the prisoner ought to be permitted to make his confession and receive the solaces of religion, without being overheard by any other than his confessor and the great Judge of the living and the dead.

It is undoubtedly true that the sheriff may and ought to deny access to a priest, if he has good ground to suspect that it is his purpose to abuse it by enabling the prisoner to escape, and therefore it is that the law confers a discretion on the sheriff; and in cases where he has doubts, though upon insufficient grounds to justify a refusal of private conversation, he should adopt such other precautions as may be necessary to counteract the supposed design of the priest. In the present case, I am not informed that there is any such pretence. Mr. Gilbride comes recommended to me as a respectable, upright, and pious man.

It is chiefly for the purpose of affording opportunity for repentance and preparation for death, that our laws, unlike those of most other countries, prohibit the execution of the prisoner within a shorter period than four weeks after his conviction. That intervening period is expected to be devoted to preparation for death, and the instances are so rare as to excite astonishment where the prisoner does not invoke the spiritual aid of the ministry of his religion.

If Mr. Gilbride has misunderstood your views on the subject, as is not impossible, this communication is unnecessary, and I excuse myself for troubling you with it only upon the ground of solicitude that the prisoner may not, through any fault of the government, be deprived of the religious privileges he desires

and needs. If, on the other hand, you have, as he supposes, decided that Mr. Gilbride can not be permitted to administer the appropriate rites of his church, I respectfully recommend that you reconsider the subject, and grant his application.

I am, very respectfully, your obedient servant.

To the Sheriff of the County of Lewis.

RECEPTION OF PRESIDENT VAN BUREN.

State of New York, Executive Department,
Albany, June 30, 1839.

Sir: I have this evening received your letter of yesterday, in which as chairman of a committee of the common council of the city of New York, you invite me to participate with the common council and their fellow-citizens in the reception of the president of the United States in that city.

I might perhaps be content with declining to accept the invitation, upon the ground of other engagements, and the duties which will not permit me to be absent from this place. But as this would leave me liable to be misapprehended, I am obliged to add an explanation. I desire to do so without disrespect to the president, and with the highest respect for the common council.

Should the chief-magistrate of the Union favor the place of my residence with a visit, or should my duty call me into his vicinity, I should with cheerfulness and pleasure pay him all the respect called for by his public station, or properly due from mine. Nor do I intend to say or imply that the demonstrations of respect proposed by the common council are not justly due to him, both in his public and personal character. I can not consider the question of acceptance of the invitation tendered me, without reference to the public station I have the honor to hold; nor can I have misunderstood my fellow-citizens so much, as not to know that, whatever other circumstances may have moved their favor toward me, every public demonstration of their confidence I have had the honor to receive during my life, has proceeded in some measure upon the ground of my avowed disapprobation of his political character and his public policy. By no means intend-

ing to express a doubt of the sincerity of his motives, and entertaining, as is most just, entire confidence in the purity and disinterestedness of the large body of my fellow-citizens who admire his character and approve his measures, I can not forget, in deference to his elevated station, that with a desire no less sincere than his to advance the best interests of the country, I have regarded his policy and measures as injurious to the prosperity and welfare of his native state, and that that state has honored me for firmly and frankly maintaining those opinions.

Nor can I forget that in carrying out the policy which has crowned, with imperishable honor, the name of one who was his and my most illustrious predecessor in the station assigned to me —a policy which is destined to extend the fame, enhance the wealth, exalt the condition, and immeasurably increase the happiness of the people of this state—the state administration at every step encounters an uncompromising hostility, proceeding from that powerful administration of which the president of the United States is the chief. While on the one hand the dictates of my judgment, and the conscientious desire to discharge faithfully my official obligations, enforce my adherence to that policy, and while on the other there exists no ground to anticipate an abatement of that hostility, it is manifest that my relations to the president can undergo no change. It would at any time, and under any circumstances, be an extraordinary demonstration of respect on the part of the chief-magistrate of this state toward any public functionary, were he to leave his duties at the capital to receive such functionary in your city; and such a demonstration by me, while those relations exist, would afford evidence of inconsistency and insincerity.

I could have wished, either that the invitation of the committee had been informally made, or had been communicated to me on an early day, so that I might have advised its withdrawal; and thus the necessity for this explanation would have been avoided. But I can not bring myself to regret that I am obliged to decline the invitation.—Our republican institutions can never be more safe than when the discussion of public measures, and of the character of public men, is so vigorous as to bring into the offices of the general and state governments individuals whose relations prevent the possibility of combination between them to perpetuate power conferred only for the public good.

I pray you to express to the committee my acknowledgments for this mark of their attention, with the assurance of my sincere respect toward the common council, and my ardent desire for the prosperity of the city over which they preside, and whose welfare is identified with that of the state and the Union.

I am, very respectfully, your obedient servant.

THOMAS G. TALMAGE, ESQ.,
Chairman Committee of the Common Council of New York.

CITIZEN-SOLDIERS.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, Ociober 27, 1839.

GENTLEMEN: I hasten to acknowledge the receipt of Captain M'Ardle's letter of yesterday, written in your behalf, and informing me that on the 21st inst., you transmitted as a committee of the officers of the lines and members of the flank companies of the four divisions of infantry in the city of New York, an invitation to a public dinner, on any day prior to the first of November next, that might meet my convenience.

I regret to be obliged to say that the communication thus referred to, did not reach me, and that your letter of yesterday contains the first information I have received of the honor proposed by my fellow-citizens.

It is a further cause of regret, that public duties and engagements which can not be put aside, will not permit me to be absent from this place during the present week. I am obliged therefore to decline the invitation. But I can not do so without returning my grateful acknowledgments for this manifestation of the respect and kindness of so large and patriotic a part of the militia of New York. The occasions on which I recently reviewed the first division of artillery, and the four divisions of infantry, have already abundantly compensated me for the time and attention thus bestowed. They have enabled me to obtain a better knowledge of the actual condition of that military force upon which the authorities of the city must rely, when the civil police shall be found insufficient to maintain public tranquillity,

and which must always constitute an important arm of public defence against invasion. The information thus obtained has increased in a very high degree the respect I have entertained for that intelligent, patriotic, and liberal body of my fellow-citizens, who have sustained the militia system throughout a period when public favor was withdrawn from it. I have, moreover, been made sensible that the military studies and pursuits of the officers of the militia of the city of New York, have had their legitimate effects upon the personal character and feelings both of the officers and men. The hospitalities extended to me already will be long remembered. This new evidence of respect and kindness which you have communicated to me, and which proceeding from those with whom my opportunities of acquaintance and intimacies have been necessarily more limited, lays me under obligations which I shall never forget. I pray you to assure the gentlemen you represent, that it would afford me great pleasure to meet them in the manner they propose, and that I shall endeavor to make manifest my sense of the honor they have done me, by a cordial co-operation in the efforts which they are making to procure such modifications of the militia system, as will at once render it more efficient and less onerous to the public. An organized and well-disciplined militia is as necessary as any other institution founded by our forefathers. It is of vital importance to the existence of republican government, and the maintenance of democratic principles. Standing armies in the place of our militia, would soon introduce a monarchical system, in the place of republican institutions. Men can never safely maintain democratic principles if they are deprived of the means of self-protection enjoyed by our patriotic forefathers, who were the first to proclaim them. Entertaining these views, I shall at all times endeavor to contribute to your success in the important department of public services in which you are engaged.

I am, gentlemen, with the highest respect, your obedient servant.

To the Committee of the Military of New York.

RIGHTS OF THE INDIANS.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, June 1, 1840.

I RECEIVED yesterday your address adopted in council on the 29th day of April last. In that communication you solicit my influence in breaking up the treaty, recently made by your chiefs with the government of the United States for the surrender of your possessions in this state and your removal from among us, and you ask my aid in resisting the execution of the treaty.

I have sometimes seen with regret the sale of lands by Indian tribes, who, having adopted the customs of civilized life, were beginning to experience its advantages and enjoy its comforts. I have moreover always lamented and condemned the frauds practised upon such tribes by agents of the government, and parties interested in procuring the relinquishment of their lands. So far from countenancing such frauds, and practising upon the ignorance of the Indian chiefs, I have deemed it the solemn duty of the government to protect the rights of the Indian nations, and secure them alike against the frauds and the violence of white men. Such a course is due to them, as the survivors of the ancient proprietors of the country. It has been guarantied by treaties, and it is enforced in regard to the Indians of this state, by the recollection of their alliance, in the day of their strength and our comparative weakness, in wars carried on for our advantage, not theirs, and in the defence of our liberty and independence.

But the constitution has established a tribunal to determine when the public interest will be promoted by treaties, and to decide upon their equality or justice. The recent treaty with your people having been approved and ratified by that high tribunal, it has become the law of the land. It does not rest with the state authorities to question the fairness of the treaty, much less

to resist its execution. On the contrary, an obligation rests upon the executive authority of this state to sustain the treaty, and to co-operate with the general government in carrying it into effect.

If I am to understand from your address that it contemplates a new appeal to the justice or magnanimity of the federal government, for leave to rescind the treaty, or for a modifications of its provisions, I certainly shall not interpose any obstacles to such a measure, and I earnestly hope, that if your people have suffered any wrong in the negotiation, that wrong may be speedily and effectually redressed. If, on the contrary, it is proposed to resist the government, and forcibly to retain possession of the ceded lands, I can not too earnestly warn you against such dangerous proceedings. They can only result in the ruin of what remains of the Six Nations. No sympathy can sustain you against the power of the government, and no American citizen can espouse your cause. This is a government of laws. You have enjoyed its protection as well as white men, and can not with impunity rise up in hostility against it. If, therefore, no interposition by the general government is to be obtained, I recommend to you to impress upon your people the necessity of submission to the laws. I advise you in that event to accept with the least possible delay, the equivalent secured to you by the treaty for the lands you have relinquished, and to organize your society in your new home, in such a manner, and upon such principles, as shall conduce to a speedy improvement in agricultural pursuits, and the adoption of the laws, habits, and manners of the American people.

To the Great Sachems and Warriors of the Senecas, or Six Nations of Indians.

LETTER OF CONDOLENCE TO MRS. HARRISON.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, April 9, 1841.

MADAM: In compliance with a request of the legislature of this state, I communicate to you resolutions which they adopted on receiving intelligence that it had pleased the Almighty Ruler of nations to remove from this life the president of the United States.

The legislature desired that in performing this solemn duty I would convey to you an expression of their sympathy with you in the affliction which that lamentable event brings home to you and to the other relations of the deceased. Reluctant as I am to protract my intrusion upon sorrows which I know full well must have higher consolations than even the condolence of a great nation, I shall nevertheless discharge my duty very unsatisfactorily if I leave it to be inferred that these expressions of sympathy of which I am the organ are merely conventional.

The legislature are not ignorant of the domestic virtues of the departed president, nor of his tender affection toward yourself and all others to whom he was intimately allied. Death has made final, so far as this world is concerned, a separation which you had reason to hope and expect would be brief and temporary, and the painfulness of the dispensation can not be supposed to be relieved even by the remembrance of the distinguished public honors of which he was the recipient In these circumstances the thoughts of all our countrymen turn toward you with affectionate tenderness and solicitude, so soon as their first emotions of surprise and grief subside.

Permit me, madam, most respectfully to add an assurance of my entire concurrence with the legislature, and to mingle my own sympathies with those it is my duty to express in their behalf. I have the honor to be, madam, with very high respect, your obedient servant.

MRS. HARRISON, RELICT OF THE PRESIDENT OF THE UNITED STATES.

REMOVAL OF THE RECORDER OF NEW YORK.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, June 7, 1840.

GENTLEMEN: Your communication on the subject of the condition of the court of general sessions of the city and county of New York, has been received. I fully concur in the opinion that the law passed at the last session re-organizes the court by dispensing with the judicial services of the aldermen. Nor have I any doubt of the constitutionality of the law. Indeed, after the continued exercise of the legislative power for so many years in similar instances, and since the exercise of that power has been sustained by the supreme court, on so many occasions, it seems very extraordinary that any functionaries should be willing to jeopard the public peace and embarrass the administration of justice, by assuming to act as judges, in violation of the law in question. I confess my surprise that such functionaries should in the present instance be sustained, in their illegal proceedings, by an officer of such acknowledged ability and learning, as the recorder of the city of New York.

But, gentlemen, the constitution prescribes a suitable mode for correcting every error and removing every evil in the administration of justice. It is true, as you suggest, that the constitution authorizes the senate to remove judicial officers, upon the recommendation of the governor. And it is also true that the action of the recorder in the present case, by obstructing the business of the court, and encouraging and sustaining the aldermen in their opposition to the laws, might, without violence, be regarded as a sufficient cause for removal in that way, yet the recorder is acting as a judge under the solemnity of a judicial oath, and no improper or corrupt motive is attributed to him. Under such circumstances, a removal by the senate, or an executive recommendation, would very naturally be regarded as assailing the

independence of the judiciary. Whatever may be the evil consequences of his course, the general principle ought not to be forgotten, that the exposition of the laws may be more safely intrusted to courts of justice, than to the executive authority. It seems to me, therefore, that it will accord better with the spirit of the constitution, to leave the question for the consideration of the supreme court than to employ the executive power, and thus furnish a precedent for future invasions of the independence of the judiciary.

I am, with great respect, your obedient servant.

To the Honorable Messrs. Baylis, Woodhull, Jones, and Graham, } *Aldermen of New York.*

PRISON LIBRARIES.

Auburn, *July* 11, 1840.

My dear Sir: The public expectation of an improvement in the moral instructions at the stateprisons has been manifested in various ways. It is a reasonable expectation, and I confess that I have observed it with much pleasure. I have long believed that it was expedient to instruct every ignorant convict how to read, and to supply proper books for those who can read. A difficulty arises concerning the selection of books. There would naturally be jealousies excited in the community, if the selection was hastily or inconsiderately made. The surest way to avoid such jealousies seems to be, to adopt Harper's Common-School Library, and the books in that collection will be found well adapted to the purpose. I therefore respectfully recommend to the inspectors of the stateprisons, to procure a sufficient number of sets of that library, so that each convict who can read shall always have a volume in his cell. If there should be any convicts in the prison who are foreigners, instructed to read in their own tongue but unacquainted with ours, it would be advisable to furnish them with a bible in their own language. You will have the goodness to lay this letter before the board of inspectors.

I am, very respectfully, your obedient servant.

To the Agents of the State-Prisons at Auburn and Sing-Sing.

EXTRADITION OF FUGITIVES FROM JUSTICE.

State of New York, Executive Department,
Albany, October 10, 1840.

Sir: A requisition issued by your excellency for the surrender of Horatio Stevens, as a fugitive from the justice of Pennsylvania, has been delivered to me.

By the affidavit thereunto annexed, it appears that the alleged fugitive was, in September last, a passenger in the steamboat Milwaukie on Lake Erie from Detroit to Buffalo, that the boat touched at Erie in the state of Pennsylvania, that while she was lying at the public wharf there, Perry H. Oliver, a deputy-sheriff of that state went on board to arrest Stevens, by virtue of a writ of *capias ad respondendum* in a civil action, that the deputy-sheriff found the defendant concealed, that Stevens then made an attack on the deputy-sheriff, that a struggle ensued, that the deputy-sheriff succeeded in bringing him from his hiding-place, that Stevens requested the deputy-sheriff to go into the captain's office, where Stevens assaulted and prostrated the deputy-sheriff, that the boat had at this time got under weigh, and the deputy-sheriff was carried to Dunkirk in Chautauque county. Your excellency requires me to surrender the defendant Stevens as a fugitive from justice, that he may be taken to the state of Pennsylvania for thus assaulting and resisting an officer in the execution of civil process.

I have no knowledge of the parties or the transaction other than that furnished by the affidavit. I am not informed whether the alleged fugitive is a citizen of this state or of Pennsylvania, of Michigan, or of some other state. I am not informed whether the action in which the *capias ad respondendum* was issued was an action upon a contract or a tort. I am not informed where the cause of action accrued, whether the action was one in which the detention of the supposed fugitive was justified by the laws

of Pennsylvania, or whether it was a non-bailable action. I am not informed that the writ contained any clause authorizing the defendant to be held to bail, or that there was an order of a competent tribunal for that purpose.

By the laws of this state, a sheriff who should seize and detain a defendant by virtue of a *capias ad respondendum* in a civil action upon contract, would be guilty of assault and battery and false imprisonment, and resistance by the defendant sufficient to overcome force by force would be justified. I am perhaps bound to know that a different law prevails in Pennsylvania. Nevertheless I can not be ignorant that even there some writs of *capias ad respondendum* are bailable, and others are not bailable. It is respectfully submitted that the affidavit ought to show that the writ in the present case was of the former description. It is manifest that every word in the affidavit before me may be true, and yet, if I understand the laws of Pennsylvania, the resistance of the defendant may have been justifiable, and he may be guiltless of the offence.

Your excellency will perceive therefore that I can not comply with the requisition, because the papers annexed to the same are defective. I am bound, however, in candor to say to your excellency further, that if the papers should be amended, yet inasmuch as imprisonment for debt, whether of citizens of this state or of the stranger within our borders, is forbidden by our laws; and inasmuch as the offence of resisting an officer making an arrest by virtue of civil process is only made a contempt of court and simple misdemeanor, and is not punishable as a felony, the question would then arise whether the case falls within the description of offences in which the obligation to surrender fugitives from justice is prescribed by the constitution of the United States.

I am, very respectfully, your obedient servant.

His Excellency David R. Porter,
Harrisburgh, Pennsylvania.

AMERICAN STATE CREDIT.

State of New York, Executive Department,
Albany, November 5, 1841.

Sir: No one who reasons justly concerning the tendency of events, can doubt that we are rapidly advancing toward a state of general distrust of state credits. The failure of two of the states to pay the interest on their stocks, and the anticipated failure of others, have given existence in Europe to doubts of the ability of some of the states, and painful apprehensions concerning the ultimate disposition of all of them, to pay their debts. These doubts and apprehensions, unquestionably, have been increased by the catastrophes of the bank of the United States of Pennsylvania, and of some other moneyed institutions having extensive connections abroad.

Owing to this unhappy state of things, the stocks of some of the states are depreciated from fifteen to sixty per cent. It is manifest that several of the state stocks approximate to the point where the securities must cease to be available for any of the public objects for which they were authorized.

It is not difficult to foresee that, in such a state of things, distrust will become universal, and a pressure come upon the country, which will be disastrous to its industry and injurious to its fame. This state and some others which owe small debts, or have large revenues, will be able in this emergency to secure, by vigorous measures, a discrimination in their favor, and preserve their public credit; but this will have little effect in mitigating the pressure, or preventing its disastrous effects upon the prosperity of the whole nation.

It seems to me that the time has arrived when measures of relief should be suggested. Whence are they to come? Manifestly, they can not be expected to come from the non-paying states. They will sink into despondency, and the public credit will become the sport of faction. I think that effectual relief can come from no other quarter than the federal government. To

me it seems both right and just that, in such an exigency, that government should interfere for the relief and restoration of the states. The Union has no interests separate from those of the states, and their prosperity is the object of the federal as well as of the state institutions.

The debts of the states have generally been incurred in improving roads, rivers, canals, education, and other great foundations of national prosperity and union; and nothing but an absolute constitutional injunction ought to prevent the nation from sustaining the states in their reverses consequent upon their having pursued so laudable and patriotic a policy. Can it be done consistently with the provisions of the constitution? The general government is charged with the responsibilities of maintaining a postoffice, and of providing for the national defence, not to speak of its responsibilities in regard to the regulation of internal trade and commerce. The states have constructed thoroughfares which are indispensable to the federal government in discharging the responsibilities specified. No one denies that the states have a right to require and receive a reasonable compensation for the use of their thoroughfares by the government of the United States.

It has been suggested that the government might come to the relief of the states by purchasing the perpetual enjoyment of the right to use such public thoroughfares of the state for peaceful and warlike purposes within the scope of the constitution. Such a measure, if promptly adopted and carried out in a just and liberal spirit, could not but produce the happiest effects, in reviving the hopes and encouraging the efforts of the states to extricate themselves from the dangers by which they are menaced. The details of the measure would require careful preparation; but I am sufficiently convinced of its general merits, and indeed of its pressing necessity, to recommend it to the early consideration of the federal government. It seems properly to fall, in the first instance, under the consideration of the war department, and that of the postoffice. I have, therefore, taken the liberty to bring it to your notice, and to ask that you will consider the subject with the care that you are accustomed to bestow upon suggestions for the public good.

I have the honor to be, very respectfully, your obedient servant.

The Honorable John C. Spencer, *Secretary of War.*

TREATMENT OF THE INDIANS.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, October 3, 1842.

GENTLEMEN: Your memorial as a joint committee of the four yearly meetings of friends of Genesee, New York, Philadelphia, and Baltimore, on the subject of the grievances of the Seneca and Tuscarora nations of Indians, was duly received.

Your communication informs me, that it is believed the deeds of conveyance annexed to the late treaty, and executed by the Seneca and Tuscarora Indians to the Ogden Land Company, can be legally proved to be fraudulent; that the proper investigation of the subject will require time; and that, as the treaty allows the Indians five years in which to remove, you deem it only just that they should be allowed quietly to enjoy their possessions until the expiration of the time allowed for their removal; that, contrary to this expectation, the Indians are harassed by injunctions, and disturbed by surveyors running lines over their lands; and that Israel Jermaine, one of their chiefs, has been hindered from completing some improvements he was making on his home; and that these proceedings naturally keep the Indians in a state of excitement, and may lead to violence. I have considered the subject with that sympathy for the parties affected, which their unhappy and agitated condition is so well calculated to excite, and with that respect for the source from which it proceeds that is due to enlightened and persevering philanthropy.

I regret that the information communicated is not more particular in its details. The process of injunction can only issue from courts of equity; and it will be seen at once, that the executive authority, subordinate itself to the courts, can not in any case interpose to prevent the execution of such process. It can only be by such process that the Indian chief referred to is prevented from making improvement. I have looked carefully into

the statutes, but have not been able to find any express provisions for preventing trespasses upon Indian lands, except in cases of trespass by cutting wood and timber. Undoubtedly, however, the general principles of the common and statute laws are applicable to the protection of Indian inhabitants against vexatious disturbances. If the conduct of the surveyors under the treaty is of that character, there is a remedy by indictment, and the proper mode of proceeding is to present the subject to the district attorney.

Without more precise information on the subject, I can not undertake to say that the surveyors have committed an offence requiring the interference of the public prosecutor. Such information will be cheerfully received and considered without delay, if it is believed necessary to have the aid of this department. But I should be wanting in frankness, were I not to say that I suppose the present difficulties arise from the recent treaty, and were unforeseen at the time of the enactment of existing laws. If protection is needed by the Indians, especially against legal proceedings, that protection can not be effectually afforded without legislation adapted to the case. If I am right in this view of the subject, I can only suggest to you the expediency of bringing it before the legislature at the next session.

Your communication also refers me to the statute which declares that all sales of Indian lands within the state without the authority and consent of the legislature are void, and supposes that the provision applies to the land conveyed by the Tuscaroras, under the beforementioned treaty. I have examined the treaty between this state and Massachusetts, and find that the land of the Tuscaroras was not excepted from it. It seems, therefore, that it is placed upon the same footing with the lands of the Senecas. In this opinion the secretary of state, who has long been familiar with the subject, concurs. We are of opinion, moreover, that the power of Congress on that subject is paramount to that of the state; and therefore, in any event, a sale actually and fairly made by the Tuscaroras in their sovereign capacity, by virtue of a treaty with the United States, would be valid.

Fully aware of the importance of the subjects you have brought before me, and unwilling to pass hastily upon them, and thus contribute in any way to embarrass the society of Friends in their very praiseworthy efforts to secure the Indians against fraud and

oppression, I have felt it to be my duty to submit your memorial, together with my reply to the attorney-general, and solicit his opinion upon the legal questions discussed.

I remain, gentlemen, your friend and obedient servant.

To the Yearly Meeting of Friends.

FUGITIVES FROM JUSTICE.

State of New York, Executive Department,
Albany, June 16, 1842.

Sir: Your excellency's communication of the 13th instant, informing me that you had, by advice of the council of Rhode Island, offered a reward of one thousand dollars for the apprehension of Thomas Wilson Dorr, Esq., as a fugitive from justice, charged with treason, and that from late intelligence you had reason to believe that he was in the city of New York, and therefore requesting me to place the warrant, issued upon the requisition heretofore made by your excellency, in the hands of a proper officer to effect the arrest of the fugitive, has been received this morning.

I have now the honor to inform your excellency that Amos Adams, Esq., sheriff of the county of Albany, has this day been charged with a warrant, in compliance with your requisition, and he will proceed immediately to execute the same. I have again to suggest for your consideration the expediency of immediately designating the agent to receive the fugitive, because I believe that such a proceeding would be more harmonious with the spirit of the constitution than the detention of a person accused of such a crime, and under such circumstances, in a jail of this state. Nevertheless, the form of proceeding adopted by your excellency being in strict conformity with the law of the United States, I have not hesitated to perform the duty devolving upon me.

I am, with very high respect, your excellency's most obedient servant.

His Excellency Samuel Ward King,
Governor of Rhode Island and Providence Plantations.

BRITISH CLEMENCY INVOKED.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, July 15, 1842.

SIR: You will recollect that in the season of disturbances on the frontier of this state in 1837, a number of Americans who made inroads into the Canadian territory were captured there, some of whom were afterward executed, and others were transported to New Holland.

The excitement in the Canadian provinces has subsided, the hostile manifestations and feelings on this side of the frontier have passed away, and there is now no ground whatever to apprehend their return.

It has occurred to me that her majesty's government might think it not unworthy the dignity, nor inconsistent with the security, of their country to extend clemency and pardon to the persons remaining in New Holland, if their attention should be called to the subject. For Linus Wilson Miller, of Chautauque county, who is one of them, of whom I have some personal knowledge, and for his aged parents, I can not but feel sincere sympathy. They have appealed to me, to put forth some effort for the deliverance of their son.

I beg leave to submit the subject for the consideration of the executive, and to request that if it shall be consistent with the dignity, and compatible with the relations of the country, an expression in behalf of the prisoner may be made to the government of Great Britain. The showing of such clemency as I have suggested, would, I am sure, have a tendency to increase the feelings of kindness and friendship, which it is so desirable should exist between the people of this state and her majesty's subjects beyond our borders.

I have the honor to be, most respectfully, your humble servant.

THE HONORABLE DANIEL WEBSTER,
Secretary of State.

PARDON PAPERS

PARDON PAPERS.

THE CASE OF PATRICK CONWAY.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, April 2, 1839.

AT the last oyer and terminer held in Rensselaer county, Patrick Conway was convicted, upon his own confession in open court, of the murder of Herman J. Groesbeck, and was sentenced to be executed on the 10th day of May next. At a previous term of the court, an issue upon the prisoner's sanity was tried before a jury empannelled for that purpose. The jury were discharged without rendering a verdict. The evidence obtained by the district attorney since that time, taken in connection with the testimony upon the trial of the issue before mentioned, fully satisfied the court and the counsel for the people that the prisoner is a lunatic, enjoying lucid intervals, and rendered it quite probable that he was insane at the time of committing the crime of which he has been convicted. Under these circumstances, the court and counsel for the people have recommended a commutation of the prisoner's punishment, to that of imprisonment for life in the stateprison. I have arrived at the same conclusion in regard to the prisoner's sanity, after a careful examination of the testimony. I concur also with the court in believing that it would be dangerous to the public peace, to suffer the prisoner to go at large, so long as he remains subject to occasional insanity. The prisoner, who is now enjoying a lucid interval, acquiesces in this opinion, and has therefore pleaded guilty upon the indictment, under expectation of executive clemency. But I can not deem it just or expedient to send the convict to a stateprison. These institutions were designed for another class of persons. Their internal arrangement, their discipline, and all their associations,

are altogether unsuitable for those who labor under the infliction of insanity. Humanity forbids that lunatics should be treated as felons.

I think our laws provide for the confinement of the convict in a lunatic asylum, or in the county poorhouse or county jail, if the proper magistrates of Rensselaer county shall deem his confinement necessary to the public safety.

Referring this matter to them, I have decided to grant to the convict, Patrick Conway, a full pardon.

THE CASE OF CATHARINE WILKINS.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, May 1, 1839.

You have been convicted of grand larceny, and have been adjudged to suffer imprisonment at hard labor in the stateprison for three years. You were made known to benevolent individuals of this city by your crime and the trial consequent upon it. These gentlemen have made unsparing exertions to ascertain your real name and history, and to call your distant friends to your aid. Those friends, when informed of your unhappy situation, have only answered that they were too humble to be able to exercise any influence in your behalf, and too poor even to visit you in your distress. Whatever willingness I might have had to interpose for your relief, you must be aware that it has been accidental, if it is not rather to be regarded as providential, that those gentlemen were moved to solicit that interference. But you ought also to understand that executive interposition was by no means to have been expected, even upon such solicitation as has prevailed in your behalf. Very many applications have been made to me for pardon after conviction and before the sentence was carried into execution. I have granted none under such circumstances where I was not satisfied that the conviction was unjust. Yours is a case of manifest and confessed guilt. You are pardoned. It is because you are young; because this is your first exposure to the law; because you are a woman and a stranger, and it may in charity be believed that your virtue would have resisted temptation, had not want and seduction

combined to effect your ruin. If consigned to a stateprison, your good name would be irretrievable, and the associations to which you would be exposed would forbid all hope of reformation. I have thought it my duty to accompany the pardon now freely sent to you, with the advice that you return as speedily as possible to your aged and afflicted mother; that you justify this extraordinary act of mercy by humble and persevering assiduity in domestic duties, which is the only way to regain the respect and confidence of your friends and neighbors. If you will do this, you will carry consolation to the heart of your parent, and I shall have the satisfaction of knowing that I have not done injustice to the public in yielding for once to impulses of sympathy.

To Catharine Wilkins, alias ——— ———.

Note.—A gentleman who had interested himself in this case, a short time since, in passing through New Jersey, found this young woman there in a reputable employment, and enjoying the entire respect of the community. She drew the governor's letter from her bosom and said that its advice had saved her from ruin, and that it had never been for one moment out of her immediate possession.—*Ed.*

THE CASE OF SAMUEL BURNS.

State of New York, Executive Department,
Albany, June 28, 1839.

Dear Sir: The governor has had under consideration the application for the pardon of Samuel Burns, and has directed that a pardon issue in his behalf. The prisoner therefore will be restored immediately to his friends. The governor desires that the grounds of his pardon may be made known to him, in the hope that the communication may tend to recall him from the dangerous course he so early adopted.

The prisoner is pardoned, not because he was innocent; not because the punishment adjudged was too severe; not because he has conducted himself humbly or otherwise during his confinement; but solely because he was of a very tender age when he committed his offence, and it is hoped that his severe experience of the consequences of crime, will operate as a powerful admonition. He possesses some virtuous motives, which

this exercise of executive clemency may call into action. There will remain, notwithstanding this pardon, a stigma upon the prisoner's name, and civil disabilities consequent upon his conviction. If he shall prove himself not unworthy of the discriminating favor now extended to him, these may be removed on some future occasion on a petition, by more complete pardon. The governor requests you to communicate these views to the mother of the prisoner.

DANIEL COLVER,
New York.

JUVENILE DELINQUENTS.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, July 16, 1839.

DEAR SIR: Your communication of the 10th instant has been duly received. I regret that you did not deem it important to answer my inquiries, in relation to the situation and health of *Frederic Becker.* Unreasonable fears are often excited on the part of parents, and I am often able to relieve their solicitude, and reconcile them to the privation of their children, by obtaining such information from the prisons.

Mrs. Becker is a poor and afflicted but excellent woman, and might in my judgment be safely trusted with a knowledge of the condition of her child. It requires a heart of stone to deny such a woman's petition, for the pardon of a child 13 years old; and at the same time to refuse to inquire whether the child is well and cheerful.

I thank you for your information concerning Theodore Anthony, nor do I object that it is not more explicit, yet I am sure that his mother might be trusted with a knowledge of the condition of her son. I make my acknowledgments also for the views you have given me, concerning the legality of imprisoning persons in the house of refuge, convicted of offences of a grade less than felony, and also for the opinion of Mr. Jordan, which is entitled to very great respect. The act of 1826 was before me, and was duly considered, in deciding upon the application for the pardon of Caswell. The difficulty in the matter is, that the revised statutes

exclude petit-larceny from the class of felonies, and while they provide that felons shall be confined in the house of refuge, they repeal the law of 1826, because it is repugnant to those provisions. It was with great reluctance that I came to the conclusion, that petit-larceny was not an offence for which a convict could be sent to your institution, nor did I adopt it until I had consulted one of the revisers of the laws, now the secretary of state. Having come to this conclusion, it seemed important that it should be understood by your board, to the end that, if expedient, the law of 1826 may be restored. And the information for which I addressed you concerning the number of prisoners in the institution, convicted of petit-larceny, is important to enable me to decide how I shall act on applications for pardon resting upon that ground.

I shall have very great pleasure in conversing with any committee of your board of managers on the subject. I am impressed with a most favorable opinion of the institution, and am desirous to contribute to its usefulness.

With sincere respect and esteem, I remain your obedient servant.

DAVID TERRY, JR., ESQ.,
Superintendent of the House of Refuge, New York.

THE SAME.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, November 16, 1841.

SIR: Your letter of the 10th concerning Elizabeth Jane King, a child in the house of refuge, was duly received. From a personal acquaintance with some of the gentlemen who testified in the paper before sent to you, I was induced to think favorably of the mother of the child. The communication which you transmitted to me seemed to render further inquiry proper. I have accordingly made such inquiries, and have learned that both the mother and her husband have, since the child was sent to the house of refuge, become communicants of a church in the city; that the deportment of the latter is not known to be in any way irregular or immoral, and that the former, as I am informed by

the pastor, exhibits evidences of sincerity and devotedness in the profession she has made. Considering these circumstances, and the tender age of the child, I am of opinion that it will be prudent and right to restore her to parental care.

I give her this letter, therefore, requesting that the board of managers will give her her child.

I remain, with sincere respect, your obedient servant.

THE SAME.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, November 27, 1841.

SIR: A letter, dated at the house of refuge on the 23d instant, has been received. The omission of your signature is presumed to have resulted from inadvertence. The present condition of the subject to which it relates, renders it necessary to recite what has occurred.

On the 3d instant, I addressed you a letter enclosing a favorable certificate concerning the character of Mrs. Charles, the mother of Elizabeth Jane King, a child ten years old, in the house of refuge. I stated that, considering the character of the woman, her deportment and associations, and those of her husband, and also the tender age of the child, I was of opinion that it would be expedient to restore the little prisoner to her mother, and I respectfully requested to be informed whether there would be any objection on the part of the managers. A reply was received bearing date on the 10th instant, in which by direction of the managers you gave me an extract from the account the child gave of herself and her parents when she entered the house of refuge, on the 3d of June, 1840, being then only nine years old. This account stated that her stepfather worked in a fur factory, and when business was dull, labored as a boatman; that the parents never attended any place of public worship on the sabbath, but that the child used to go to sabbath-school—that young as she was she had been taken up four times for staying out at night—had lodged in the watch-house once, once in the dwelling-house of the watchman, was once sent directly home,

and the fifth time was taken up for stealing money in a store, which was the crime for which she was sent to the house of refuge. You further stated that on a re-examination the child said her mother used to take her to a house where there were dancing and other irregularities. You closed your communication with informing me that the managers with the knowledge they had of the case could not think they would be doing justice to the child to restore her to parents who appeared to have come so far short of their duty.

On the 16th instant, I acknowledged that communication and informed you that from a personal acquaintance with some of the gentlemen who testified to the papers I had before sent to you, I had been led to think favorably of the mother; but that your letter had been regarded as making occasion for further inquiries concerning her — that such inquiries had been made, and had resulted in information that both the mother and her husband had, since the child was sent to the house of refuge, become communicants of a church in Albany — that the deportment and conduct of the husband was not known to be in any way irregular or immoral, while the mother, as her pastor informed me, exhibited gratifying evidences of sincerity and devotedness in the profession she had made — that considering the circumstances and the tender age of the child, I was of opinion that it would be prudent and right to restore her to parental care, and I therefore requested the board of managers to give the child to her mother, she being made the bearer of my communication.

Your letter of the 23d, by direction of the managers, informed me that previously to the receipt of my first letter, preliminary negotiations had been had for indenting the child to a person in the country — that after your reply to that communication, and under the belief that the reply would be satisfactory, the managers completed the negotiation by indenting the child — but that if I still remained of the opinion that it would be best for the child to restore her to her parents, the managers would use their best endeavor to cancel the indentures.

While I regard with entire confidence the discipline and management of the house of refuge, and venerate the motives of the managers of that institution, and do not doubt that the disposition they have made of the child was regarded as both wise and benevolent, I remain, nevertheless, of opinion, in the first place,

that the child's account of her parents was not altogether reliable, and in the second place, that the parents by their reformation and their engagement and perseverance, now some months, in a religious course of life have removed the only grounds upon which the laws could justify a denial of their parental care of a female child of such tender years. The mother is manifestly very candid; she explained to me that she was heretofore dependent on day labor out of her own house, and that the child fell into bad habits and associations, in consequence of the mother being unable to watch over her. The family are now in comfortable circumstances, and the parents are conscientious, affectionate, and well instructed in their parental duties. To doubt whether it is better to restore their child, under such circumstances, than to leave her in the care of any stranger, would be to distrust nature. The suggestion of the managers is therefore accepted, and in order to avoid all difficulty concerning the indenture, I herewith transmit a pardon of the little apprentice. Should the master refuse to surrender her, you will have the goodness to return the pardon to me, with information of his name and residence, that I may direct a writ of habeas corpus to be sued out for her release.

The misapprehensions which have arisen on this subject very naturally resulted from the difference of position and information possessed by the managers and myself — but they do not at all diminish the high respect for them and yourself, with which I remain, your obedient servant.

MR. DAVID TERRY, JR.,
House of Refuge, New York.

CASE OF LAWRENCE M'CARTHY.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, July 29, 1839.

DEAR SIR: I have received your communication of yesterday, and have, I trust, bestowed upon it all that consideration which it demands, as the last appeal for mercy in favor of a man whose life, in one sense, was in my hands. It is a fearful responsibility. Yet it is, on that account, to be discharged with firmness and judgment. I assure you, my dear sir—and if the communication shall not arrive too late to be read to the unhappy man whose last hope it must extinguish, I assure him—that in no other way could his excuse for his murderous deed have been brought so favorably to my notice, or to that of the justices of the supreme court, as by his confession made in the fear of God, and communicated in your unsophisticated and impassioned letter.

I moreover assure both you and him, that while I do not intend to assert a belief unnecessary to be adopted, and injurious to the prisoner's wife and her murdered parent, I have at no time suffered a doubt of the truth of the prisoner's confession to intrude upon my mind, while I was weighing the provocation, as an excuse for the prisoner's crime. For that purpose, I have assumed it to be true; and if, admitting it to be true, I had been advised, or had myself believed, that it presented sufficient ground for mitigation of the prisoner's punishment, I should, without any reference to public opinion, have granted a respite of the sentence, to obtain such evidence of the truth thus assumed, as would have justified a commutation of the punishment. But such has not been the fact.

The prisoner had been married to the daughter of the deceased. The evidence is abundant that, very soon after that connection took place, he became inflamed with hatred against the parent

of his wife. After the lapse of weeks, and in the absence of every other member of the family, he committed the murder, alone, and with cool deliberation. He concealed his victim with the greatest care, and framed and persisted, until upon his trial, in falsehoods to account for his sudden and mysterious disappearance. What is his excuse? If his suspicions be conceded to be just, that the deceased had committed incest with his daughter, the prisoner's wife. If this were true, and the violence had been perpetrated when the foul deed was committed, the act might have been excused. But the prisoner deferred his revenge until much time had elapsed for reflection and for consideration; and none but a temper too desperate to be tolerated, not to say encouraged, would have, even with such a provocation, cherished its resentment while it matured into the full purpose of felonious murder. It is the law of the land that the prisoner's crime is punishable with death. It is not for me to abrogate or change this law. On the contrary, I have come under solemn obligations, to take care that it is fulfilled. I could indeed pardon the offender, with or without a condition. But I could not do so without establishing a precedent for all similar offences. Shall I, then, establish the law to be, that cold, calculating revenge justifies or excuses murder? To this conclusion I must come, before I could arrest the arm of justice. It remains for me only to say, that the supplication for mercy can not prevail.

I hasten this reply, that it may, if possible, remove any groundless hope the prisoner may indulge. And I hope that he will prepare, with the aid of your pious ministrations and the special consolations of the Holy Spirit, for that dread tribunal, where, like him, we must all appear as suppliants for mercy.

I am very sincerely, my dear sir, your friend and obedient servant.

To the Reverend Michael Gilbride.

THE CASE OF WILLIAM L. M'KENZIE.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, January 27, 1840.

DEAR SIR: I have received a petition from William Lyon M'Kenzie, Esq., a prisoner in your custody under a conviction in the circuit court of the United States. The petitioner sets forth that he is deprived of the privilege of exercise, and suffers other inconveniences, as a prisoner, and he appeals to me to meliorate his condition. It is my opinion that the sentence under which he is imprisoned, is subject to the absolute control of the president of the United States, not only in relation to the power of pardon, but to any melioration of his condition as a prisoner. And I am certain that no power is reposed in me in such cases. Nevertheless, regarding the prisoner's offence as a political one, I am of opinion that a distinction ought to be made as far as possible between his treatment and that of criminals convicted of crimes, involving moral turpitude. I know that the constitution of our jails, and the system of government prescribed in them, do not admit of carrying this distinction to the extent which humanity would dictate. It must rest chiefly in the kindness, humanity, and discretion of the sheriff and jailer. I commend the prisoner's condition to your careful attention, desiring that it may be made as comfortable as possible, not doubting that the sentiments I have expressed would be approved by the president of the United States, and your conduct in accordance with them would receive his sanction.

I am, very respectfully, your obedient servant.

TO THE SHERIFF, &c.

THE CASE OF JABEZ FULLER.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, April 30, 1840.

JABEZ FULLER was convicted at the last oyer and terminer, in Westchester county, of the murder of Sally Masten, and was sentenced to be executed on the 22d of May next. An application has been made to me, to commute his punishment to that of imprisonment for life in the stateprison.

The pardoning power is vested in the executive, for the purpose not of enabling that department to dispense with the laws, but to secure the more effectual execution of them. It does not rest with the executive to question the wisdom of the law which denounces capital punishment against the crime of wilful murder. It is obvious that mitigation of such punishment, when adjudged by the courts, would be inconsistent with the policy of the law, unless in cases of doubtful guilt, or of circumstances peculiarly commending the convict to executive clemency.

The prisoner had a fair and impartial trial, and the verdict of the jury was approved by the court. I have submitted the proceedings to three of my legal advisers: his honor the chancellor, the honorable Samuel Nelson, chief-justice of the supreme court, and the honorable Greene C. Bronson, a justice of the same court. They have given me their opinion, that the conviction was regular and upon sufficient evidence. A more brutal murder than that exhibited in the testimony before me, has seldom been committed in this state. The prisoner had lived for many years in unlawful intercourse with the deceased, knowing her to be the wife of another. Degraded as she was by this connection, and in her general conduct, she was, nevertheless, a defenceless woman, whom the prisoner had made dependent upon him for protection. The family in which they lived, were alarmed on a Sunday morning, in May last, by the cries of the deceased, and

the prisoner was found endeavoring to strangle her in bed. The prisoner was separated from her, but soon renewed his assault. Having provoked her into an altercation, he followed her into another room, and while she was sitting down he kicked her in the face. The prisoner walked out. The deceased prepared breakfast, and went to call him. He seized her, threw her upon the ground, kicked her, and stamped upon her with such violence as to extinguish the sight of one eye, break her bones, and deprive her of speech. She died within a few days afterward, of the injuries thus received. During all this brutal violence, his language evinced a murderous intent. When it was shown to him that he had rendered one of her eyes sightless, he swore he would stamp the other eye out of her head. He threatened that he would break every bone in her body, and that he would be the death of her. While the bystanders were assisting her into the house, the prisoner, unmoved by the pain he had inflicted, exclaimed that he wished she might die, and he hoped she would die. When the victim of his brutality lay helpless before him, he said, "Anybody who would do as she did, ought to die." These outrages were committed while his brother and the prisoner's child were present, but neither their presence nor persuasion nor remonstrance had influence upon him.

The apology for this barbarous murder is, that both the deceased and the prisoner were drunken and depraved persons, and were in some degree intoxicated, when the murder took place. I confess that these circumstances seem to me not to commend the prisoner to executive clemency. If the maintenance of justice ever requires the example of capital punishment, this seems to me to be, of all others, a case in which public sympathy ought not to save the offender.

The sheriff will make this decision known to the prisoner, so that false hopes may not interfere with his preparation for the great change before him.

THE CASE OF BENJAMIN RATHBUN.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, May 27, 1840.

THE application for the pardon of Benjamin Rathbun is supported by the petition of several thousand citizens of this state, who certify their personal acquaintance with the prisoner, and express a warm and generous sympathy in his favor. It would be quite unnecessary on such an occasion to acknowledge a respectful deference to the wishes of the petitioners, since an unjust and unreasonable denial would expose the executive to the loss of a large portion of the public confidence.

It is not contended that the conviction of the prisoner was unjust or erroneous. He exercised freely the right of challenge to his jurors. He was defended with zeal, ability, and learning. Sympathies such as no other offender has ever awakened in this country, held public opinion in suspense, until the result of his trial was known, and the same sympathies agitated the community with hopes of his deliverance, while the proceedings on that trial were under review in the supreme court. The question now is whether he is a proper subject for executive clemency. Its decision necessarily requires a consideration of the circumstances under which his offence was committed. I am especially desirous to perform that duty, without misapprehensions of facts, as I certainly shall, without prejudice against the prisoner.

He was for many years engaged in mercantile transactions, banking, building, common carrying, and in the purchase, improvement, and sale, of real estate. He had in his employ in 1836, two thousand laborers, besides ninety-seven agents, assistants, cashiers, superintendents, firemen, measurers, clerks, and overseers. His daily disbursements exceeded ten thousand dollars. He had the control of several banks, and kept a financial agency in Buffalo, and another in the city of New York.

In carrying on this extensive business, the practice of forgery was adopted, at first, in a very small way, to save the protest of some important paper. Afterward his cashier, Lyman Rathbun, emboldened by success, resorted to similar proceedings as often as he became straitened for funds, making sometimes false checks, and sometimes false endorsements. Sometimes quite an amount of spurious paper accumulated in the brokers' offices, and at other periods all was taken up. The necessity for forged paper increased so much, that Lyman Rathbun Howlett, and Rathbun Allen, the prisoner's nephews and clerks, were initiated, and were all busily employed in making, selling, and negotiating forged paper. The extent of these forgeries is not known, but it is notorious that the names of thirty-five persons and firms were habitually used as drawers and endorsers, and that it was impossible for the prisoner himself to distinguish between his genuine and spurious paper, without referring to private marks in his books. It is now well understood that the amount of forged paper remaining unpaid when the prisoner was arrested, exceeded one and a half millions of dollars. Including what was issued for the various purposes of renewal, postponement, and payment, the whole amount forged must have been more than twice that sum. It is believed that these forgeries surpassed in boldness and perseverance all similar offences in this and every other country. It was alleged in behalf of the prisoner, that he had necessarily devolved the exclusive management of his financial concerns upon his cashier, Lyman Rathbun, and that he was entirely ignorant of these forgeries, until about the time of his failure. Extraordinary as it would have been if these transactions had been carried on so long for the prisoner's advantage, and by his confidential agents, and without his knowledge or participation, yet it is certain that these allegations were received with favor by the community, and that he enjoyed so far as public opinion was concerned, the benefit of the humane principle, that the accused shall be presumed innocent until his guilt is established. I have examined the record of the trial, and have discovered, with much regret, that it leaves no possibility of doubt of the prisoner's agency and participation in carrying on the great system of forgery which it describes. Three notes of five thousand dollars each, with the forged endorsement of eleven citizens of Buffalo, were enclosed in a letter written by himself to

the prosecutor. This letter contained the request that the notes might be laid away in a private desk, and assigned a false reason for asking that extraordinary favor. Admissions of the prisoner were proved entirely inconsistent with the ignorance he pretended. He admitted to a witness, that when he came to a knowledge of the forgeries, his business was so extended that it was necessary to continue them — that he could not control them — that he had been in the expectation of withdrawing the forged paper from the market, but that the thing grew worse instead of better, and it was too late to stop it. He spoke also of the distress of mind he had suffered while the practice was going on, from constant apprehension that the forgeries would be discovered. His nephew, Rathbun Allen, acknowledged to have been a confidential assistant of his cashier, and to have been one of the persons by whom the forged endorsements for the prisoner's benefit were made, testified that he forged the signature of the prosecutor as the drawer of several notes, in the prisoner's presence, and by his direction, and gave the paper thus signed to the prisoner himself. It is true that this is the testimony of an accomplice, to be received with caution, but it bears the evidence of candor and truth, and is corroborated by circumstances, by the prisoner's admissions, and by his memoranda and letters. Papers were found in the prisoner's handwriting, containing copies of spurious notes, with remarks showing that he had put the originals in circulation. His letters show a familiar acquaintance with his financial concerns, and great energy in their management. In these letters he repeatedly gave his agents instructions as to the form of spurious paper required for use, and advice how to avoid detection, and urged them to greater exertion in carrying the perilous business to a successful termination. The allusions in his correspondence to the forgeries are, as might be expected, obscure, yet admit of no other application.

They show that he was for a long period, if not from the commencement, the master-spirit in the conduct of the forgeries, as well as the only party benefited by them. They leave no doubt that, if he did not initiate his younger brother and nephews, he led them deeper into crime, and continued to avail himself of all their plans, skill, management, adroitness, and deception, until the sudden exposure rendered these unavailing. I confess the prisoner's guilt seems to me much aggravated by the ruin in

which he has involved three persons, who, from their youth, their relationship to himself, and their dependence upon him, it is so natural to suppose were the instruments employed by him in carrying out his desperate plans, to maintain an impracticable credit and retrieve ruined fortunes.

There are six indictments against the prisoner remaining untried. Whatever charity others may indulge, as an executive officer, I am bound to assume that these prosecutions rest upon sufficient grounds. The constitution gives the executive no power to pardon, or to suspend criminal proceedings, before conviction. If a pardon were granted in the present case, it would, nevertheless, be the duty of the public prosecutors to cause the prisoner to be brought to trial upon the other indictments, and they have the right to invoke my aid if deemed necessary. It would certainly be an extraordinary spectacle, if the civil authorities should be found acting in opposition to each other in the administration of justice, or if a prisoner should one day be pardoned from a conviction for forgery, and the next be brought to trial for other similar offences upon indictments, pending at the time such pardon issued.

Extraordinary as are the circumstances of Benjamin Rathbun's conviction, the sympathy of the petitioners in his behalf is by no means without cause. He has been for more than twenty years a citizen of Buffalo. While living there, he rose by industry and energy, from an humble condition, to wealth, respectability, and extensive usefulness. The wharves, streets, and institutions of that flourishing and beautiful city, furnish many evidences of his enterprise and public spirit. He was, until the forgeries were discovered, generous in all his transactions, courteous and kind in all his relations, munificent to the public, and charitable to the poor. Aged and respected parents, and a wife, even more eminent for her virtues than for her misfortunes, are involved in the consequences of his conviction.

The occasion does not require me to controvert the opinion expressed by the petitioners, that the punishment the prisoner has already suffered, by being arrested in mid-career, suddenly stripped of his dazzling honors, torn from his family, cast out of society, degraded to the companionship of vileness and crime, and finally stamped indelibly as a felon, is enough, without prolongation of his imprisonment, to reclaim him from his dangerous

ways and effect his reformation. The criminal code has one purpose more important than the reformation of the offender. That purpose is the prevention of crime, by the example of punishment. The prisoner's offences exceed in magnitude, and in injurious consequences, those of probably all the convicts, for similar crimes, in the stateprisons. His education, intelligence, experience, condition in life, associations, and relations, exempted him from the necessities and temptations which palliate, if they can not excuse, the transgressions of more ignorant and humble offenders. Assuming, as is suggested by the petitioners, that he acted under great excitement, and without sordid motives, it is by no means certain that it would be safe to extend a pardon on that account. In the first place, such a refinement would hardly be comprehended by those who are to be affected by the example of punishment. In the second place, if the crime of forgery more rarely proceeds from ambitious than from sordid motives, the present case shows, at least, that it is more bold and dangerous when it does thus occur. In instituting the comparison there is also much danger of judging uncharitably those to whom sordid motives are imputed. The first crime is almost always committed under the pressure of some real or supposed necessity, and under the influence of a delusive hope of future ability to make restitution. If there is one department in the administration of government, where impartiality ought to be maintained more rigidly than in any other, it is in the exercise of the pardoning power. The plea which prevails in favor of one whom the world has esteemed and respected, and in whose behalf thousands address the executive, ought to be equally efficacious when offered by the most obscure prisoner in his solitary cell. It would be altogether inconsistent with the public welfare to grant pardons to all those for whom an excuse could be offered, at least as plausible as that so prominently presented in this case. And yet if such considerations are suffered to prevail in behalf of Benjamin Rathbun, it would be cruel injustice to deny them force in any other instance. The very circumstances which have induced so much exertion in his behalf, have excited public attention in regard to his case, which is well understood throughout the whole community, and has unfortunately become a part of the history of the state.

For this reason I deem it certain that there is no other offender

whose pardon would so much impair the public confidence in the firmness, impartiality, and energy of the administration of justice. His conviction was necessary to maintain the sway of the laws, and the rights of citizens, and to vindicate the dignity and honor of the state. I reluctantly add, that it seems to be a case in which the effect of that conviction must not be impaired by the exercise of executive clemency.

THE CASE OF MICHAEL VAIL.

State of New York, Executive Department,
Albany, July 22, 1840.

Application has been made for executive clemency in favor of Michael Vail, who was convicted, on the 15th of October, of the crime of an assault and battery upon his wife, with an intent to kill her. He was sentenced to be imprisoned in the stateprison five years. The prisoner was convicted upon his own confession.

There are no minutes of testimony, and I am left without any information concerning the crime, except that it was committed in a fit of intoxication, by firing a loaded pistol with intent to kill. It is not alleged that the prisoner fired the deadly weapon in self-defence, in a sudden burst of uncontrollable passion, or even upon great provocation. I am left therefore to infer, that if the prisoner's fatal purpose had been accomplished, he would have been guilty of murder.

The petition is signed by his wife and children, and sets forth that the prisoner became intemperate a short time before he committed the fearful crime; that he was a very worthy, respectable, wealthy man, a kind husband, and indulgent father; and that he committed the crime in a state of intoxication.

The petitioners assure me, that if their application shall be successful, they will provide a comfortable home for the prisoner in one of the western states. The gentlemen who constituted the court join in the application, on the ground that the wife has forgiven the prisoner, and that he is now more than fifty years of age. The prisoner's previous respectability and wealth, aggra-

vated rather than extenuated his offence. No previous good conduct can be received to excuse murder, or an intent to commit that dreadful crime. His intoxication would not have been received by the court as an excuse, if the prisoner's fatal purpose had been accomplished. The wife's forgiveness of such an unnatural and inhuman crime is honorable to her and to her sex; the solicitude of the prisoner's children for his freedom is natural and praiseworthy. I am not unmoved by sympathy for them, and for the prisoner. But it can not be safe or wise to publish in this community, that five years imprisonment is too severe a punishment for the man who, respectable or otherwise, drunk or sober, discharges a deadly weapon with intent to murder his wife. I doubt not that a pardon would increase the happiness of the prisoner's family, but the peace and security of many families would be put in jeopardy by such ill-considered clemency.

THE CASE OF EZRA WHITE.

State of New York, Executive Department,
Albany, November 18, 1840.

Sir: Many engagements have prevented my reading until to-day your letter of October 26, which arrived here during my absence from the city.

A very imperfect view of the conduct of public men is generally obtained from the newspapers, especially during a political canvass. It is a fundamental principle of law and of the constitution, that no citizen shall suffer in his person but upon conviction of a capital crime by due course of law. The executive alone possesses the power of staying execution in capital cases.

Let me ask you to imagine that you had a son convicted of murder; that a judge of the supreme court should allow a writ of error, and should certify to the executive that there was probable cause to believe that the judgment was erroneous, and would be reversed upon a review of the record. What would be your opinion of the executive who should refuse to stay execution until the record could be reviewed? Writs for review in the forms of appeals, certioraris, and formal writs of error, are

allowed in all cases involving property, no matter of how small a value. Is the life of a citizen to be held less sacred?

Let me ask you to imagine again that the same cause having been reviewed by the supreme court, all the judges of that court certify that although they have confirmed the conviction, yet that the question is so grave and doubtful, that they deem it their duty to grant a writ of error to carry the cause to the court of dernier resort for its decision, and they desire a stay of execution for that purpose. What would you say of an executive, who, assuming in a case of life and death to be confident when the court doubted, should send your son to the grave unheard? What would be the measure of public execration due to such a tyrant? What his reproach of conscience?

Would either be diminished by the circumstance that any portion of the public clamored for the blood of the victim, or that a party press imputed his just interference to political or unworthy motives?

In the cases I have presented to you, you have that of Ezra White. He is unknown to me but by his conviction, and the consequent proceedings of the courts. No petition for his pardon has ever been presented to me, nor a request of that kind made. His trial has never been read nor considered by me, because I would have no prejudice for or against him to sway me from the impartial justice I owe all the citizens of the state. The blood that flows under the executioner's axe, without the full and perfect conviction of the offender prescribed by the constitution and laws, will stain the magistrate in the day when he shall stand before the same tribunal with his victim.

Whenever the courts of law shall deliver Ezra White into my hands, with their record of his conviction, his crime, its motives, its aggravations, and its mitigations, will be considered, and such a decision will be made as is required by a due sense of the responsibilities I owe to God and my country. In the meantime, I should be very unworthy of those responsibilities, if I were capable of listening to the intimidations of the press, or the persuasions of partisans.

I remain, sir, very respectfully, your obedient servant.

To the Reverend James Douglass.

THE CASE OF JACOB LEADINGS.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, December 2, 1840.

SIR: I have received and have duly considered the petition of my fellow-citizens of Albany county, praying for a commutation of the sentence of Jacob Leadings, who was convicted on the 12th day of October last, of murder, and was sentenced to suffer death on the fourth day of December instant.

The petitioners admit the justice of the verdict rendered against the prisoner; but they submit as a reason for the appeal in his behalf, that they entertain conscientious scruples of the right of the community to inflict capital punishment.

The opinions of those who deny that right are entitled to very great consideration, as well from their respectability and intelligence, as from the grave importance of the subject. Nevertheless, it seems to me that the question belongs to the legislature. Whatever might be my own doubts, I am charged with the execution of the laws as they are, not with the responsibility of making them, as I suppose they ought to be. The power of pardoning criminals is confided to me, for the purpose of maintaining the laws, not to repeal them or set them aside. A pardon granted upon the ground I have mentioned, would involve the obligation to pardon in all other capital cases, and thus the laws, solemnly established by the legislature, would be virtually repealed by the executive authority. The prisoner is represented to me by the petitioners as illiterate and ignorant, and, when not intoxicated, an inoffensive person. The report of the trial is before me. The prisoner, in his own dwelling-house, with deliberate intent, without provocation, killed his wife, the mother of his thirteen children. Can any man in this Christian land be so ignorant as not to know that such an act is a crime against the laws of God and man? The evidence is not conclusive that he

was intoxicated when the offence was committed; but let that fact be admitted, can intemperance excuse so horrible a crime? The law forbids that he should live to destroy the lives of others. The law adjudges that when one member of society thus takes the life of another, he shall be cut off, as an example to deter others from similar transgression.

It does indeed happen occasionally that without impairing the salutary force of example, a victim may be rescued from the gallows; but who shall be left to the murderer's fate, if it be not he who slays the mother of his children.

The petitioners further represent, that notwithstanding the Christian counsel and faithful attendance of the prisoner's religious friends and the clergy, it is to be feared that if his sentence should be carried into effect, he would pass from time to eternity entirely unprepared, to appear before the bar of God.

It is a fearful, and I earnestly hope it may be a mistaken, apprehension. But I can scarcely conceive the obduracy which the petitioners describe. However this may be, the plea, nevertheless, can not be allowed; for it would be to execute the judgment of the law upon the penitent and broken-hearted, and save those whom neither conscience nor the fear of death, or of the tribunal beyond the grave, can soften and subdue.

I have answered the application with as little delay as was consistent with due deliberation, in order that the few hours, which yet remain to the prisoner, may not be misspent, under a delusive hope of executive clemency.

THE CASE OF FRANCIS PAGES.

State of New York, Executive Department,
Albany, February 22, 1841.

Your letter of the 18th instant, returning me your thanks for a pardon by which you have been released from the stateprison, has been received. This evidence of a grateful heart gives me much pleasure. But I derive much more satisfaction from your assurance that you will endeavor to pursue the path of virtue hereafter. I write you this note in the hope that it may be useful in aiding your resolution. You must bear in mind always that your pardon was granted, not because the offence you had committed was a trivial one, but, because, great as it was, you were very young, and were without parental care and admonition in a land of strangers. Neither these considerations nor any other would be effectual if you should again come under the condemnation of the law. You must remember also that you have brought a stigma upon your name that can be worn away only by many years of virtuous conduct. When you arrive at maturity you will not be permitted to exercise the rights of citizenship. These were forfeited by your crime, and have not been restored by the pardon you have received. They will never be restored unless you shall first retrieve the good character you have lost. Let me hope that your conduct may be such that whoever shall be in my place when you have arrived at full age will not deem it inconsistent with the public welfare to remove your disabilities. You must also bear in mind that the greatest security you can have in pursuing a virtuous course of life, will consist in your assiduous and affectionate discharge of the duties you owe to a mother, whose love exceeds all that you are hereafter to experience from any other human being throughout your whole life. May Heaven sustain and bless you.

Francis Pages.

THE CASE OF SAMUEL JOHNSON.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, June 25, 1841.

A PETITION of citizens of Suffolk county, praying that the sentence of death pronounced against Samuel Johnson, who was convicted in May last of the murder of his wife, may be commuted to imprisonment for life, has been received and duly considered.

I have carefully examined the testimony, and the other proceedings, on the trial of the prisoner, and I find no reason to question the verdict rendered by the jury. The petitioners recommend him to mercy, upon the ground that he was intoxicated when he committed the crime, and was excited by a threat of the deceased, that she would cause him to be committed to jail for abandoned and disorderly deportment. If an indifferent person, or a stranger, suffers violence at the hands of another, it is contrary to the letter and spirit of our laws, to excuse the offender because he has voluntarily deprived himself of his reason by drunkenness. Much less can a husband be allowed to extenuate in that manner the horrible crime of murdering a weak, defenceless woman, living in constant subjection to his control, and whom he is bound by the most solemn religious and civil obligations to love, honor, and cherish, so long as it shall please God to permit their union.

Of eighteen convictions for murder, which have been reported to this department, since my connection with it, there have been eight cases of the murder of wives by their husbands, and in five of these the excuse of intoxication was presented as a ground for executive interposition. It must be apparent that executive interposition, under such circumstances, could have no other effect than to encourage the commission of the crime, while the frequency of its occurrence is already a subject of deep concern.

Every consideration of public policy seems to require that the course of the law, which the prisoner has violated, shall not be interrupted, and the sentence of death must therefore be carried into effect. You will please communicate this decision to the prisoner, without unnecessary delay, so that he may not be diverted by the delusive hope of executive clemency, from the solemn duty of preparing to appear before that tribunal, where Justice acknowledges herself satisfied by the offerings of penitence and faith.

I am, very respectfully, your obedient servant.

To the Sheriff, &c.

THE CASE OF PATRICK RUSSELL.

State of New York, Executive Department,
Albany, November 19, 1841.

Dear Sir: Patrick Russell, an individual whose intemperate habits had brought poverty and wretchedness upon an unoffending family, and them and himself into a condition of dependence upon his brother-in-law, Edward Logue, on the first day of June, 1841, deliberately and wilfully murdered the mother of his children, with no other excuse for that horrible crime than a misapprehension of the benevolent actions of Mr. Logue, and the confidence reposed in him by the deceased. The accused was convicted, and is now lying under a sentence of death. The brother-in-law, in the exercise of feelings which commend him to respect and sympathy, has applied to me to commute the unhappy man's punishment to imprisonment for life, upon the ground that the prisoner might have been laboring under mental derangement when he committed the deed.

I have been furnished with the views of the case entertained by several enlightened and humane citizens of New York, among whom are the circuit-judge, and associate-judges, before whom the prisoner was tried, medical men, yourself, and other spiritual counsellors. The subject has been carefully considered, with the aid of the chancellor, the honorable Mr. Justice Bronson, of the supreme court, and the attorney-general. I find myself obliged

to declare as the result, that there is no evidence showing that the prisoner was in any degree bereft of reason when he committed the crime; and I find no cause to interfere with the course of the law. Will you cause this decision to be made known to the prisoner, in the manner best calculated to direct his thoughts to that tribunal where mercy is never withheld from the penitent offender?

I am, with high respect, your obedient servant.

REV. JOHN POWER, D. D.,
Vicar-General.

THE CASE OF HENRY THOMAS.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, April 26, 1842.

DEAR MADAM: In granting a pardon to your husband, Henry Thomas, I think it very important that he should not be left to misunderstand the grounds of clemency. When he shall return to you, you will impress upon him the consideration, that no person guilty of a similar crime in the city of New York has been pardoned within a year past; that this favor is granted to him, not because his crime is regarded as a trivial one, but because he was very young when he offended—was pressed by neglect and despondency, and committed the crime to save you from want, and immediately afterward manifested penitence and a desire to make atonement; and because I am unwilling to see two youthful persons—so virtuous, as you are represented to be, and he is said to have heretofore been—plunged into deep distress by the rigorous operation of the law, when my interposition may possibly avert such a misfortune.

If he views the matter in this light, he will see that the pardon is chiefly granted for your sake, and in the hope of his permanent reformation, and he will be convinced that, if he shall again relapse into crime, the laws of the country can not again be turned aside upon any consideration of favor or sympathy for him, or even for you.

Fearful of trusting him again to such trials as met him before,

I have directed Judge Lynch to retain the pardon until you shall have made arrangements which will secure your husband some permanent and respectable employment. When that has been done, you will take the pardon and release him from his imprisonment; and may God bless you and him.

THE CASE OF THOMAS TOPPIN.

State of New York, Executive Department,
Albany, July 29, 1842.

Gentlemen: Thomas Toppin has been convicted in New York of the crime of murder, committed under circumstances of great atrocity, and was therefore sentenced to suffer death on the 5th day of August next.

Since his conviction representations have been made to me, that, in 1832 or 1833, he was affected by a coup-de-soleil which prostrated his reason, and that he has since that visitation been an insane person, with lucid intervals, and a mind constantly enfeebled; and that the crime was committed in a state of mental derangement.

This defence was offered at the prisoner's trial, and was disallowed by the jury. It has now been presented in a manner which deserves consideration, together with an explanation of the reasons why the evidence now submitted was not produced at the trial. The testimony is not conclusive; yet, when the gravity of the case is considered, the evidence is deemed sufficient to induce an inquiry into the subject. I beg leave to ask you to conduct that inquiry. To enable you to prosecute the same, I send you a copy of the minutes of the trial, together with the affidavits which have been submitted to me. I respectfully request you to examine and converse with the prisoner, and to assign a time and a place for hearing whatever may be offered on the subject, and to procure the attendance of persons who may be able to give any information thereupon; to reduce the result of your inquiries into a report to be submitted to me, with your opinions concerning the moral accountability of the prisoner; accompanying the same with such depositions as you may

think proper to take, and returning to me at the same time the papers herewith sent. A copy of this communication will be sent to the person who supports the application for executive clemency. The prisoner's sentence has been respited until the 26th day of August next, to allow time for your investigation.

In adopting this course at the suggestion of one of the justices of the supreme court, and of the attorney-general, I am aware of the burden I seek to impose upon you; but the importance of the subject, in regard to the cause of public justice and to the prisoner, and the hazard of relying upon exparte information, induce me to hope that you will give me the aid of your efforts, in ascertaining the truth concerning the facts submitted for your investigation.

I remain, gentlemen, with very high respect, your obedient servant.

JOHN W. FRANCIS, M.D., *Resident Physician,*
AND J. R. WHITING, ESQ., *District-Attorney,* } *New York.*

THE SAME.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, August 18, 1842.

DEAR MADAM: The paper which you will find herein announces the result of my consideration upon the case of Thomas Toppin. Deeply impressed with the generous devotion you have exhibited in behalf of the miserable being who, in one sense, owes to your exertions a prolongation of his life, I can not deny you the pleasure of communicating to the prisoner the results of your mediation in his behalf.

I remain, dear madam, with very high respect and esteem, your humble servant.

MRS. ANN S. STEPHENS.

THE CASE OF JOHN C. COLT.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, March 12, 1842.

DEAR MADAM: Custom excuses me, as indeed necessity would, from acknowledging the many advisory letters I receive concerning subjects of official duty. Yet I can not deny myself the pleasure of returning you my thanks for your letter of yesterday, concerning the application for pardon to the offender, whose crime has excited so much and various feeling throughout the country. You will have learned before receiving this, that the decision on the application preceded my receipt of your letter. Still I am happy to find such an evidence that the view I have taken of the subject will be satisfactory to at least a portion of the community. I have read with great satisfaction the article in the "Mothers' Monthly Journal," to which you refer me, and am deeply impressed with the right, sound, moral, Christian, and political principles it promulgates. I assure you, my dear madam, that you will do society a good service by continuing to spread such sentiments, especially in regard to the necessity of a firm execution of the laws.

The sympathy for convicted persons is not unnatural, and those who indulge it forget the danger to which it leads. When blood has been shed, the whole community is alarmed. Every citizen rushes forward to apprehend the fugitive and bring him to justice. The vindicatory spirit continues its work until the offender is convicted and sentenced, and then that spirit reposes and is satisfied. The opposite or antagonist spirit rises then, and at first timidly and apprehensively approaches the executive power, but gaining confidence becomes more and more importunate, until it happens in most cases that the governor, who conscientiously declines to pardon a murder judicially established, and perhaps unrepented of, comes to be regarded as himself the only manslayer in the transaction.

My table groans with letters from gentlemen and ladies, of acknowledged respectability and influence, among the former are gentlemen of every profession, and of the press, recommending, urging, and even soliciting, the pardon of John C. Colt, and it is fair to suppose that there would have been petitions numerously signed, if there had not been a distrust of the influence of such forms of appeal in capital cases. I shall surprise you when I inform you that your letter is the only remonstrance that has been received; and yet there is no doubt that a considerable, perhaps the larger, portion of the community will approve the decision which has just been made.

It is true, madam, that Mrs. Stephens, then a stranger to me, procured proofs which raised a doubt of the moral accountability of a man condemned to death, and saved him from that extreme punishment. It was well and womanly done, and I rejoiced in the humanity, spirit, and perseverance, she displayed under convictions that an unfortunate and bewildered maniac was in danger of death, and none put forth the effort necessary to collect the proofs which might exist of his insanity.

And why should not a woman, who is satisfied that a family has been bereaved by violence, committed by one who is an acknowledged seducer and libertine, speak her thoughts and fears, if she apprehends that the offender is about to escape, through misapprehension and misrepresentation!

Be assured, madam, of my high respect, as well as my grateful sense of the personal kindness which your letter expresses toward me.

MRS. ELIZA C. ALLEN.

THE CASE OF JOHN C. COLT.

State of New York, Executive Department,
Albany, November 11, 1842.

John C. Colt was convicted on the 27th day of September last, at a court of oyer and terminer in the city of New York, on an indictment for murder, and was sentenced to suffer death on the eighteenth day of the present month. The trial was humanely conducted. Peculiar advantages of defence were allowed. Every objection raised by the counsel was deliberately considered; the charge of the court manifested unusual tenderness toward the accused; and the jury examined the evidence with extraordinary patience and attention.

When the verdict had been rendered, an application for a new trial on the grounds of alleged prejudice by a juror, improper conduct by the jury, and other supposed irregularities, was considered by the court of oyer and terminer, and justly denied. The presiding judge then allowed a writ of error, by which the cause was removed to the supreme court, and in the meantime the sentence consequent on the verdict was delayed. That tribunal reviewed and affirmed all the decisions of the court of oyer and terminer, which court then performed its remaining duty by rendering final judgment. The accused then again demanded a writ of error, with a view to obtain a reconsideration by the supreme court, and in the event of an adverse adjudication, then to remove the record for revision to the court for the correction of errors. Such a writ could only be allowed by a circuit-judge, a justice of the supreme court, or the chancellor. The circuit-judge, who tried the cause, the chancellor, and one of the justices of the supreme court, with the concurrence of his associates, have severally refused to allow a writ of error, and the accused now appeals to the executive authority for its interposition.

The application is urged with a degree of earnestness and sustained by an array of influence, unusual even on such occasions, which never fail to awaken the apprehensions of the conscientious and the sympathies of the humane.

The subject is supposed to involve the following inquiries:—

1. Whether any error in law has occurred in the trial and conviction.

2. Whether the conviction was contrary to evidence.

3. Whether the prisoner is a proper subject for clemency.

In regard to the first of these questions, the governor is by no means prepared to say that he is not bound to abide by the decisions of the supreme court. It is the right of that tribunal to expound the laws, and their expositions are conclusive upon every other department of government until overruled by higher judicial authority. The governor is not constituted an appellate tribunal to review the proceedings, correct the errors, and reverse or modify the judgments of courts of either civil or criminal jurisdiction. Nevertheless the pardoning power might properly be exercised to save a convicted person from the consequences of a privation of any legal right or form of defence, resulting either from accident or from neglect, prejudice or misconduct by judicial officers. The accused complains that a writ of error has been unjustly denied, and it therefore becomes necessary to examine the grounds on which it was demanded.

When proceeding to the trial, the court of oyer and terminer discovered that there was a deficiency of unbiased jurors, and thereupon ordered that three hundred persons should be summoned. After the order had been executed, the accused applied for a list of the three hundred persons, and also to be allowed two or three days to make inquiries concerning them. The request was denied. The governor is not aware that any statute, rule, or custom of courts of justice, was violated by the decision.

The accused then challenged the panel of three hundred persons on several grounds, all of which were overruled by the court, to wit: First—*Because the number was too large.* But it was within the discretion of the court to determine how many should be summoned, and the result showed that the number selected was not large enough. Secondly—*Because only two days were allowed the sheriff to execute the order.* It was nevertheless executed. Thirdly—*Because the sheriff had not furnished the*

counsel for the accused with a copy of the list. But no such duty was enjoined on that officer. Fourthly — *Because the sheriff selected the three hundred persons by taking their names from the roll of qualified grand and petit jurors of the city and county of New York.* But the sheriff was not forbidden by law to choose the three hundred persons in that manner, and there would have been just ground of complaint if he had summoned persons not legally ascertained to possess the qualifications of jurors.

The accused next insisted that the ballots for the forty-five persons on the original panel should be drawn and exhausted before those containing the names of the three hundred, subsequently summoned, should be put into the box. But the court directed otherwise. After drawing all the ballots there was a deficiency of one juror; and when a further person was summoned, the accused required that a ballot containing that person's name should be put into the box with those of the forty-five first summoned who had not appeared when called. The court overruled the request. The person so last summoned was found not impartial, and was set aside. The accused then insisted that those among the forty-five first summoned who had not appeared should be again called, but the court awarded an order to summon another person, and the individual then summoned, being found impartial, was received as a juror. No irregularity occurred in these proceedings.

A trunk, proved to have been found in the dwelling of the accused, and in which a watch belonging to the deceased had been discovered, was produced. The court overruled an objection, and admitted testimony to prove the contents of the trunk. The decision seems to have been reasonable, and in harmony with the rules of evidence.

It was proved that all the wounds on the person of the deceased, except one, might have been made with a hatchet. The court admitted testimony designed to show that the one wound might have been effected by the discharge of a pistol. One count in the indictment charged that death was produced with a hatchet; another charged that it was inflicted with some unknown instrument. The evidence, even if inadmissible under the first count, was unquestionably proper under the last count.

The remains of the deceased having been exhumed during the

trial, the head was produced in court with a view to enable the jury to apply the testimony with greater certainty. The proceeding, although deemed erroneous by the accused, was necessary and proper, and sanctioned by the law of evidence.

Caroline M. Henshaw, a witness for the accused, during her direct examination, testified that she cohabited with him, and he thereupon offered to prove her good character for veracity, so as to rebut an adverse presumption supposed to result from the fact thus disclosed. The district-attorney objected, but at the same time admitted that the witness had given her evidence with an intention to testify only the truth. The court, thereupon, very properly declined to receive unnecessary evidence of the veracity of a witness who had not been impeached by the prosecution, and whose truthfulness had been conceded.

The 4th section of article 1, title 2, chapter 1, part 4 of the Revised Statutes, is in the following words :—

"Such homicide is excusable when committed,

"1. By accident and misfortune, in lawfully correcting a child or servant; or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent; or,

"2. By accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel or unusual manner.

The accused objected to the charge of the court because the judge did not instruct the jury that the words "*By accident and misfortune*," in the 2d subdivision of the section were to be rejected as surplusage. But no authority is found for rejecting the words thus alleged to be necessary.

The court also charged that if the jury believed under the evidence that the homicide was effected in a cruel and unusual manner, the case would not fall within the last subdivision of the section. This portion of the charge was considered erroneous by the accused, but it seems to have been in harmony with the spirit as well as the letter of the law.

The court also charged the jury that a homicide to be *excusable* must be committed without a design to effect death. The counsel for the accused questioned this position. But the law declares that homicide can only be excusable when it happens *by accident and misfortune*, and it can not so happen if it proceed from *design*.

The ground upon which the accused demanded a writ of error, was that the several decisions of the court of oyer and terminer which have been noticed were erroneous. But he was allowed to present them for the consideration of the supreme court, and they were solemnly considered and affirmed by that tribunal before the judgment was rendered against the prisoner by the court of oyer and terminer. The governor not only concurs with the court of oyer and terminer, and with the supreme court, in the opinion that the objections raised by the accused were untenable, but he sees no reason to distrust the absolute confidence in the correctness of that decision manifested by the circuit-judge, the chancellor, and the justices of the supreme court, in their refusal to allow a second writ of error. Therefore the denial of this writ thus demanded does not seem such a hardship toward the accused as would call for redress by the exercise of executive power.

After the cause had been adjudicated by the supreme court, and sentence had been pronounced in the court of oyer and terminer, the accused for the first time assumed the ground that the two aldermen who were associated with the circuit-judge on the trial were not judges, because the laws by virtue of which they acted in that capacity conflicted with the constitution. That instrument contains a provision declaring that all judicial officers (with an exception which has no application to the present question) shall be appointed by the governor and senate. Aldermen are not so appointed, but are elected by the people. But aldermen in the city of New York have always been recognised by law as judges. They were acting as such when the constitution came into existence, and since that period their judicial powers have been confirmed by many statutes. The supreme court has heretofore decided that those statutes were constitutional; that the aldermen were judges *de jure*, and that even if they were not judges *de jure*, they were judges *de facto*; that their proceedings were valid until the aldermen should be removed from the bench by the judgment of a competent tribunal, and that their judicial powers could not be questioned in collateral prosecutions in which they were not parties. Whatever opinion the governor might entertain concerning this decision, he is bound to acquiesce. He has no power either to oblige the supreme court to reconsider the question or to submit it for the examination of the court for the correction of errors. Under such circumstances to grant a

pardon to the prisoner on the ground of the incompetency of his judges, would be an acknowledgment that every judgment rendered by any court of oyer and terminer in the city of New York since the constitution was established, with one exception, was not merely erroneous, but void, and would draw after it an obligation to pardon all persons who have been, as well as all who may hereafter be, convicted of crimes in those courts—the chief tribunals of criminal jurisdiction in the metropolis. In adopting such a course, the governor would necessarily appear in an attitude of resistance to the laws and defiance of the courts instead of performing his proper office of executing the laws as expounded by the judiciary; and the pardoning power, granted only for occasional purposes of justice and humanity, would thus be perverted and made an agent of disorder and revolution.

Was the conviction contrary to the evidence?—This important question has not been, and could not be, in any form submitted to the supreme court, or to the court for the correction of errors, because in every criminal case, the jury have an exclusive right to pass upon the facts submitted to them. Their verdict can not be reviewed by any legal tribunal, and the right of the governor to examine it is only incidental to the pardoning power.

Samuel Adams resided in New York; was of about the age of thirty years, in active business as a printer of books, and was extensively known. He disappeared on Friday the 17th of September, 1841. Inquiries concerning him were published on the next Wednesday, and on Sunday the 26th, his remains were found in a rude box, such as is used in transporting merchandise, in the hold of a vessel about to sail for New Orleans. The proof on the trial left no doubt that he suffered death at about three o'clock in the afternoon on the 17th of September, by the hands of the accused, in his apartment in the second story of a spacious granite edifice on the corner of Broadway and Chambers street, no other person being then present. It was rendered quite certain that the meeting of the parties on that occasion was neither preconcerted by them, nor anticipated by the accused. It was equally clear that he had made no preparations for so dreadful a deed, and that until that time the parties had maintained amicable relations, and the accused had manifested no malice, nor even unkindness toward the deceased. These circumstances bore strongly in favor of the accused. But on the contrary, the de

ceased was a meek and inoffensive man. He was unarmed, and had visited the prisoner, although under some excitement, yet without any hostile purpose, and when the remains of the deceased were found, the head, fractured, with certainly five and probably more wounds, no longer retained the human form. There was a fracture large enough to admit the finger of the surgeon through the skull into the brain above and behind the left ear. A piece of the skull had been cut out on a line above the ear and a little to the right of a line drawn from the top of the head toward the spine. Again there was a fracture over the right ear. These wounds were manifestly the result of blows inflicted with the edge of a hatchet. In front, parts of the skull, commencing far above the left eye, reaching into the hair, extending across two thirds of the space from ear to ear and descending on the right side so as to include the eye and a large portion of the cheek, were broken in and pressed deeply on the brain. This fracture was made by several blows with the hammer end of the same instrument. A hatchet, which was one of the usual form, and in weight exceeded seventeen ounces, was found in the apartment, and identified as belonging to the accused. Each of the wounds would have been mortal, and whichever of them was first inflicted, must have instantly deprived the deceased of consciousness and of all power of resistance. Such a homicide could not have been accidental or necessary for self-defence. It was committed with a deadly weapon, in a cruel and inhuman manner, upon a defenceless, powerless man. Reason and law agree that the homicide could not have been innocent, justifiable, or excusable. Society could never exist if human life could be destroyed in such a manner with impunity. It was then a felonious homicide, and the jury had only to ascertain the degree of crime which had been perpetrated. By a presumption of law, which is the established deduction of reason, that crime was murder, and it remained for the manslayer to show that the deed would bear a milder designation. The accused could show this only by proving that Adams was perpetrating or attempting to perpetrate a crime or misdemeanor, and that the accused did not design to effect death, or that the wounds were given to aid Adams in committing self-murder, or that they were inflicted without a design to effect death, in a heat of passion, in an attempt to resist murder, or self-defence against some

great personal injury of which the accused was in imminent danger. No such proof was given or offered. But since no other human eye witnessed the deed, nor human ear heard anything but a confused sound and a heavy fall, the jury were required to suppose it possible that Adams had assailed the accused and the crime was committed in self-defence. Even if this could have been assumed, it must also have been assumed not only that there were an assault and an affray, but that the accused was in imminent danger and in the heat of passion, suddenly excited, intense, uncontrollable, and allowing no time for reflection, and that he did not design to produce death, and was unconscious that such a consequence might follow his violence. But Adams was unarmed. He had never been known to menace the accused or assail any other person. In strength Adams at most did not excel the accused. If there was an affray there would probably have been an outcry by one of the parties, unless the first blow terminated the strife by rendering one of them speechless as well as defenceless. If the accused had been in imminent danger he could probably have shown wounds or marks of an assault. But he exhibited none. On the contrary, he carefully concealed a small and unimportant discoloration of the skin accidentally discovered by Caroline M. Henshaw on his neck, on the morning after the deed was committed. And even if an affray had been proved, could it be supposed that the passion of the accused had no time to abate, and his mind no time to relent, when the first blow had relieved him from the assailant, and each subsequent blow fell upon an unconscious and unresisting victim. Murder is defined in law to be, first, the killing of a person (not under the peculiar circumstances which render homicide excusable or justifiable) from a premeditated design to effect the death of the person killed or of any human being. Second, the killing of another (not under the same circumstances before mentioned) by any act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual. It has been seen that this case presents none of the circumstances which render homicide justifiable or excusable. Even if the accused did not design death, the act he perpetrated was imminently dangerous, and the repeated blows inflicted in so inhuman a manner certainly evinced a depraved mind, regardless of human

life. Whatever was the degree of crime it was complete when life was extinguished, and could not be changed by the subsequent conduct of the accused. Yet his subsequent conduct was legitimately opened to the jury for the light it might reflect on the deed he had consummated. The house was filled with tenants from the base to the roof. The narrow room of the accused was separated only by thin folding doors from an occupied apartment, and looked out on the corner of the streets. Even without leaving the presence of the dying or dead man, the accused could have instantly summoned a multitude.—But he invoked no witnesses. On the contrary, according to his own acknowledgment, he closed the only aperture through which he might be observed, stripped the deceased of the clothing by which the person might be identified, and without aid, and almost with superhuman effort, wrapped the body in canvass; contracted it with a rope, and deposited it in a box three and a half feet in length, and standing upon the protruding knees, pressed them down by dislocating the limbs until the box could be closed. After this was done and night had come, the accused, with hands unaccustomed to such labor, washed the floor, and carefully stained it with oil and ink and tobacco to conceal the blood which had been shed. He clandestinely cast the clothing and articles of property found on the person of the deceased, except his watch, into a sink, repaired to a bathing-house, and washed the stains from his own dress, and then retired to his lodgings. Early the next morning, before the usual hour for going abroad, he returned to the apartment and resumed his efforts to remove the evidences of the fatal transaction. He carefully fastened the box, labelled it with the address of an imaginary person in St. Louis, to the care of imaginary persons in New Orleans, and carefully removed it from his apartment, and caused it to be conveyed to the ship which was expected to depart immediately to that port, and delivered it to the master, and took a receipt for it as for a parcel of merchandise. He had many associates in the city; a brother, and a mistress who seems to have been worthy of his affection and confidence, and whom he says he intended soon to admit to the rights of a wife. To none of these persons did he reveal what had happened or what he had done. On the contrary, upon mature reflection, as he says, he avoided his brother, and took counsel only with himself. He gave Caro-

line M. Henshaw a false explanation of the reasons of his late return on the night succeeding the crime, and of his early absence on the next morning.—To the person who occupied the adjoining rooms he at first denied and afterward falsely explained circumstances which had excited suspicion, and day after day, while the friends of the deceased and his fellow-citizens were engaged in anxious inquiries concerning his fate, the accused visited the place where the deceased was accustomed to transact business, and remarked on his mysterious absence like a sympathizing friend. Nature suggests a mode of proceeding in every exigency, but not the same mode in exigencies so entirely dissimilar as those of guilt of murder and consciousness of having committed other forms of homicide. Guilt seeks concealment, misfortune sympathy, and innocence vindication. If the homicide had not been felonious, the first impulse of the accused, when he discovered the fatal consequences of his violence, would have been to have invoked aid to the sufferer if living, or at least advice or sympathy for himself. If the blood which had been spilled did not accuse the prisoner, he would not have endeavored to remove the stains it left. If Adams had fallen by the hand of the accused through accident or misfortune, or even suddenly excited passion, the friends of the unfortunate man would not have been denied the melancholy privilege of giving his remains a becoming burial. Much less would the accused have mutilated those remains and disposed of them in a manner, the very account of which produces a revolt of all the sympathies of the human heart. But it is urged that consciousness of the crime of manslaughter, and fear of its punishment, would have induced concealment.—Flight from false accusation sometimes occurs, but the records of crime present scarcely an authentic case where a person guilty of only manslaughter, has concealed the dead body and increased his peril by any of the acts which distinguish the conscious murderer. Manslaughter, although for reasons of conservative policy, declared to be a felony and punished as such, is regarded by the offender, as well as by society, as a misfortune rather than a crime, or at most as a crime mingled with misfortune. He who has committed it, if he possess the common tenderness of our nature, deplores the injury he has done, but conscience vindicates him and sustains him against accusations of a higher crime.—Society exacts his punishment with reluc-

tance, and notwithstanding the law adjudges him a felon, he suffers no ignominy. Imprisonment seems to him an inconsiderable punishment compared with the extreme penalty of human laws, and his subdued and broken spirit is almost willing to endure it to solace the regret he feels for having even without design deprived a fellow-man of life. It seems impossible to suppose that an individual guilty of only such a crime, and exposed to only such hazards, would go on for hours and days, accumulating for his own destruction such a mass of the peculiar evidences of murder. From the legal presumption of guilt, the relations of the parties, the circumstances under which they met, the instrument of death, the number and violence of the blows, the mutilation of the deceased, the prevarication and falsehoods of the accused, and his studied, laborious, and persevering efforts for concealment, the jury, under a full sense of their responsibility and aware of their duty to give their verdict in favor of the accused if they entertained a reasonable doubt, pronounced him guilty of deliberate and wilful murder.

By a humane provision of law, a full report of every conviction of a capital case is required to be made to the governor, who, in considering the same, is entitled to the advice of the chancellor, the justices of the supreme court, and the attorney-general. The justices of the supreme court have carefully reviewed the report in the present case, and unanimously certified their opinion that the verdict was just. If the governor entertained doubts of its correctness, he might, perhaps, rightfully relinquish them and confide in the opinions of his learned judicial advisers. But justice to the jury, and a proper regard for the security of society, as well as a desire to temper the administration of the laws with mercy, have induced an examination of the testimony independently of the opinions of the jury and of the legal tribunals, and the result is a conviction, undisturbed by any doubt, that the accused was guilty of the murder of Samuel Adams.

It remains to be considered whether any circumstances, extraneous or appearing on the record, require executive interposition or recommend the prisoner to clemency. The attention of the governor has been directed to an account of the homicide, favorable to the prisoner, which was submitted by him to the jury, after the testimony had closed, and to proofs and arguments designed to show the probable truth of that statement. Whatever

the paper contained adverse to the prisoner became legal proof, while such portions of it as were favorable to himself were entitled to no weight or consideration. Nor is there any hardship in this rule, since the prisoner voluntarily submitted his statement, to the surprise and without the consent of the district-attorney.—The paper can have no more weight in this review than it had with the jury, for the rule that requires courts and juries to receive impartial evidence is equally obligatory on the executive department.—Nevertheless the statement has been carefully examined, and the result is that its account of the transaction is unworthy of any confidence. It was prepared for the confidential use of the prisoner's counsel within ten or twelve days after the crime, under their instructions to set down the whole truth. Yet while it purports to give an account of an affray following reproachful words, it does not state which of the parties used the words. It states that mutual blows were given before the prisoner seized the hatchet, but does not inform us how many blows, nor describe any of them, except one received by himself, more severe than the others, and which he returned with violence. It states that the parties grappled, and he was pushed against the wall, while the deceased was twisting the prisoner's neckcloth, and then the prisoner seized the hatchet and inflicted one blow—then lost all power of reason by strangulation, and remembered nothing further distinctly or coherently until afterward, when he was roused by a knocking at the door. Since his conviction the prisoner has submitted a series of letters written by himself to various friends during his imprisonment. In one of the letters written after the trial, he says that he did but defend himself against a wanton, vile, and unpardonable attack. That he asked the deceased to be just, who thereupon accused him of injustice. For calm words, the deceased gave him insulting language. His peremptory denial was returned by the deceased with blows. In a subsequent letter he excused himself by haste and want of consideration, for having set down in the statement produced on the trial, that "he was obliged to stand on the knees of Adams to crowd him into the box;" says that the first part of the statement was quite imperfect, and did not convey the whole truth; admits that he retorted language of unmeasured reproach, and gives further details so important, if true, that they could not have been forgotten when preparing

his previous statement; and which can not now be admitted as true, because they were not made known by him until that statement had proved insufficient for his defence.*

The letters of the prisoner furnish other reasons to distrust his veracity.† To receive such an exparte statement, and permit speculation based upon it to overthrow a verdict, would be subversive of the administration of justice.

The laws are always to be executed except where their penalties can be waived without prejudice to the public welfare and for reasons consistent with their general policy. Society has been deeply shocked and justly alarmed for the security of life in the metropolis. A deliverance of the prisoner by executive clemency would be an encouragement to atrocious crime. Nor does the prisoner's character or conduct recommend him to the favor which can be only sparingly yielded. He dwells with just satisfaction upon extraordinary respectability of birth; he possesses talents, and he has enjoyed more than ordinary advantages of education, and has given instruction in various modes to his fellow-citizens. But he has contracted habits and relations inconsistent with an inoffensive and virtuous life. His conduct in relation to the crime and its consequences has been insincere, in-

* Extract of John C. Colt's letter, dated February 15, 1842:—

"He almost instantly seized hold of my neckcloth, which placed me in his power—pressing me to the table and wall, he struck me three or four times in the breast, and seized me *per prives partes*. Everything seemed to turn black. I was in agony, and exerting myself for relief, how I know not. The last distinct recollection I have, before I was relieved by his fall, was, that of trying to press him off with my left hand, as I held to his collar, endeavoring with my right hand at the same time to raise myself from the table, as he had me pressed over backward upon it. It was in this painful position that I seized that accursed hatchet and gave him the unfortunate blows that I did. When relieved from his horrid grasp, I beheld for the first time my awful defence. Heaven only knows the number of blows I struck him. There may have been four or five, And when I reflect upon the instrument most unfortunately seized, and instantaneously used, it is only to be wondered that his head was not dashed into a thousand pieces."

† Extract of John C. Colt's letter, dated March 8, 1842:—

"My counsel considered my case perfectly a clear one, and believed that I should be acquitted. To produce this result they conceived that the evidence of Adams' coming to my office in bad blood, and the evidence of the scuffle, and the evidence of his account being wrong, were quite sufficient, when taking into consideration the fact that this unfortunate man had before, in several instances, shown himself a kind of dare-dog, and had been consequently turned from the houses of several citizens for abusive and insulting language. Had this not have been the conclusion, I could easily have slipped through the fingers of the law. The body of that unfortunate, foolish man was never identified, and the only positive evidence connecting me with the box containing it, was the drayman's. He swore that I was the man that delivered it to him, consequently it was alone necessary to prove that I was not about the granite building that morning, to have been acquitted. But I should for ever despise myself for slipping through the fingers of the law by such means."

human, relentless, and remorseless. He is vain, self-confident, and irreverent; imbued with false sentiments of honor, morality, justice, and virtue; and seems incapable of compunction for crime committed or sorrow for injuries inflicted. Penitence and resolutions to amend are indispensable, among other conditions, of pardon. No such conditions are offered in the present case. The prisoner has forgotten his victim, heaped insult upon his humble and bereaved family, defied the court, denounced the jury, and presented himself before the executive as an injured, not as a penitent man.

In making known to the prisoner that the expectation of pardon, the last hope of life, must be relinquished, the governor can not forbear from expressing an earnest wish that the few days which yet remain to the prisoner may be spent in preparing to appear before that dread tribunal appointed for all men, before which none can offer any other justification than sincere repentance for every error, and humble yet confiding faith in the Redeemer of Mankind.

THE CASE OF JAMES WATSON WEBB.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
Albany, November 28, 1842.

THE PEOPLE OF THE STATE OF NEW YORK:

To all to whom these presents shall come:

WHEREAS, at a court of general sessions of the peace, held in and for the city and county of New York, in the month of November, 1842, James Watson Webb was convicted of leaving this state for the purpose of giving or receiving a challenge to fight a duel with deadly weapons, and giving or receiving such challenge, and was thereupon sentenced to be imprisoned in the stateprison at hard labor for the term of two years; and whereas an unconditional pardon is solicited in behalf of the said James Watson Webb, by the court, by the grand jurors, by the municipal councils, by the officers of justice in the said city, and by many good and worthy citizens of this state, because he was not the challenger in the said duel; because the challenger, though holding a high representative trust, has not been brought to justice, and

is not amenable to the laws of this state; because the combat was not mortal, and the challenged party sincerely manifested a determination to avoid depriving his adversary of life, and he was unharmed; because the said James Watson Webb voluntarily submitted himself to justice and confessed his offence, waiving all advantage of legal defence; because, although the practice of duelling is in wanton and flagrant violation of Divine laws, and is inconsistent with the morality and humanity which ought to distinguish a civilized people, and has therefore been forbidden by the laws of this state with forfeitures, pains, and penalties, through a period of nearly forty years, and the attorney-general, judges, and grand jurors have been expressly required to bring all offending to condign punishment, yet, until now, the moral sentiment prevailing among us has not adequately sustained those laws, and all persons who have offended against the same have remained unmolested, except three who, after conviction, received pardon through the hands of our former chief-magistrates, and many of such offenders have been raised by their fellow-citizens to high executive, legislative, and judicial trusts: wherefore it is represented to us, that it would be partial and unequal to enforce in the present case penalties which may have been regarded as obsolete; and that the said James Watson Webb is deserving of our clemency: Now, therefore, know ye, that in consideration of these premises, but upon the express condition that the said James Watson Webb shall not, while he remains a citizen of this state, violate any of the laws designed to prevent duelling, nor by any act aid, assist, or abet, any such violation, nor print nor publish any justification or defence of the practice of duelling, or any paper with intent to advocate or uphold the same—we have pardoned, remised, and released, and by these presents do pardon, remise, and release, the said James Watson Webb of and from the offence whereof, in our said court, he stands convicted as aforesaid, of and from all sentences, judgments, and executions thereon, hereby restoring to him all the rights and privileges of citizenship forfeited by him in consequence of the said offence or the said conviction.

NOTE.—The following is a brief history of the case of James Watson Webb:—

In the session of 1840 and 1841, Congress passed a General Bankrupt Law—every member from *Kentucky* voting against it. In the session of 1841–'42, an attempt was made to repeal it; and General Webb, in the columns of the "Courier and Enquirer," commented severely upon the inconsistency of men voting for the repeal of the law at

that time, which they had voted in *favor* of only a few months previously. In these strictures, however, he expressly excepted the Kentucky delegation, of which the Hon. Thomas F. Marshall was one, *because they had all voted against the law.* After some other incidents, a challenge grew out of this affair, which at General Webb's suggestion was withdrawn, to be renewed at Wilmington, in Delaware. The meeting did not take place until June 25. Two shots were exchanged, the second of which took effect upon Webb—passing through the under part of the knee. It was certified to Governor Seward, that after Webb had fallen, he made proclamation that he was gratified with the result, and that he had not attempted to take the life of Marshall, but had pledged himself in writing not to do so, and that he bore him no malice. General Webb was indicted, tried, and convicted, under the 5th section of the "Act against duelling," and sentenced to two years' imprisonment in the stateprison. No similar offence has since occurred in this state.—*Ed.*

ADDENDA TO "NOTES ON NEW YORK."*

Had this article been brought down to the present time, it would have shown that the progress of our state has continued, in a signal manner, onward in all that relates to population, arts, manufactures, literature, science, internal improvement, and mechanical discovery.

Among the triumphant exhibitions of science in these, our own times, in behalf of the progress of nations in commerce and humanity, might be cited the application of steam to land-carriages and railroads, now so widely adopted by different nations, both in Europe and America. This vast application reflects perpetual honor on its discoverer, the late John Stevens, a native of the city of New York, who, at a time when not a locomotive existed in the world, devised the plan of this now so successful method of travelling and conveyance. The fact is indubitable, that this philosophic and benevolent man, so early as in 1812, had worked out in his own mind, the theory of such an application of steam. In a pamphlet which he published in that year, entitled "Documents tending to prove the Superior Advantages of Railways and Steam-carriages over Canal Navigation," published in New York, by T. & J. Swords, we find the most satisfactory details of his views and results. This valuable tract of some forty pages excited little attention at the time, and Stevens like Fulton, was pronounced a visionary projector; yet, with his illustrious friend, he lived to see the realization of his noble projects. The distinguished president of Columbia College, Charles King, LL.D., in his "Progress of the City of New York" during the last fifty years, has, with such patriotic feeling, set forth the claims of Stevens, that a short extract from his discourses may not inappropriately be here inserted.

"Next in succession among the operative causes of our growth as connected with steam," says Dr. King, "was its application to land-carriage, and soon the railroad and the locomotive were constructed to soothe and to satisfy, as far as that can be done, our national go-ahead spirit. And here again, New York was the point whence proceeded the first railroad enterprise, which was to connect this city with Philadelphia, by the Camden and Amboy railroad, in 1831; and here again Colonel John Stevens claims our admiration and gratitude. He had clearly marked out, in his own mind, long before any locomotive was constructed in Europe, the theory of such an application of steam, and the actual form in which it could be advantageously made, as well as the cost of constructing and working a railway for the use of locomotives. Long before any experience existed to justify his anticipation, he said and published, that there was no limit to the speed of a locomotive on a rail, but the strength of the materials, that it might be easily made to run as fast as a pigeon could fly, and it is one of the striking incidents connected with the opening, or the early use of the Camden and Amboy railway, that a flock of pigeons which had settled on the track, being

* Notes on the application of steam to locomotives, on Morse's magnetic telegraph, and Hoe's printing-press, were furnished by John W. Francis, M. D., LL. D.

disturbed in its approach by the rapid engine, took wing in the direction of the track, and that one of them, attempting to cross in front of the car, was struck down by it, thus most literally verifying the prediction, that the locomotive would equal in velocity the 'pigeon's flight.' Among the prophetic views which Colonel Stevens entertained in relation to locomotives, is the following: 'I can see nothing,' says he, 'to hinder a steam-carriage from moving, on these ways, with a velocity of one hundred miles an hour.'" Stevens was born in 1749, and died in 1838, at the advanced age of eighty-nine years.

Among other most conspicuous occurrences which characterize the present period of active advancement in practical and commercial science, is to be recorded the great discovery of the magnetic telegraph. Samuel Finley Breese Morse seems justly to have the claims of the great discovery, and it is worthy of note, that after much study, reflection, and labor, he, in 1835, demonstrated the practicability of his invention, by completing and putting in operation, in the New York University, a model of his "Recording Electric Telegraph," the whole apparatus, with the exception of a wooden clock, which formed part of it, having been made by himself. From the history of the progress of his invention, as published on substantial authority, it would appear that Professor Morse, while on his return from Europe in 1832, in the packet-ship Sully, a gentleman on board, in describing the experiments that had just been made in Paris with the electro-magnet, a question arose as to the time occupied by the electric fluid in passing through the wire, stated to be about one hundred feet in length. On the reply that it was instantaneous (recollecting the experiments of Franklin), he suggested, that it might be carried to any distance, and that the electric spark could be made a means of conveying and recording intelligence. This suggestion, which drew some casual observation of assent from the party, took deep hold of Professor Morse, who undertook to develop the idea which he had originated, and before the end of the voyage, he had drawn out and written the general plan of the invention with which his name will be inseparably connected. In 1840, Morse perfected his patent at Washington, and set about getting his telegraph into practical operation. In 1844 the first electric telegraph was completed in the United States, between Baltimore and Washington, and the first intelligence of a public character which passed over the wires, was the announcement of the nomination of James K. Polk as the democratic candidate for the presidency, by the Baltimore convention. Since then, says the writer from whom this statement is taken, he has seen wires extended all over the country, to the length of more than fifteen thousand miles, an extent unknown elsewhere in the civilized world.*

The type-revolving, fast-printing machine, which, in its results, constitutes a new era in the progress of the typographic art might here also be dwelt on, as reflecting additional lustre on the genius and enterprise of the metropolitan city, New York. R. Hoe and Brother, are the acknowledged inventors of this vast improvement of the printing-press. The detailed account of this extraordinary machine for the diffusion of knowledge, would require space not now at command. Suffice it to say, that four impression cylinders are capable of printing ten thousand impressions per hour. Four persons are required to feed in the sheets, which are thrown out and laid in heaps by self-acting flyers, as in the ordinary cylinder press. A press with eight impression cylinders will print sixteen thousand or more impressions per hour. The Hoes are natives of New York: their mammoth press has found both indigenous and foreign patronage, and its adoption abroad testifies to its value.

* See "Men of the Time." New York. Redfield. 1852

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